# 15-138

No. 15-___

IN THE

## Supreme Court of the United States

RJR NABISCO, INC., *et al.*,

*Petitioners.*

v.

THE EUROPEAN COMMUNITY, acting on its own behalf and on behalf of the Member States it has power to represent, *et al.*,

*Respondents.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit**

**PETITION FOR A WRIT OF CERTIORARI**


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## QUESTION PRESENTED

Whether, or to what extent, the Racketeer Influenced and Corrupt Organizations Act ("RICO") applies extraterritorially.

## PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioners, who were Defendants and Appellees in the courts below, are R. J. Reynolds Tobacco Company (a North Carolina corporation); RJR Nabisco, Inc.; RJR Acquisition Corp.; RJR Nabisco Holdings Corp.; R.J. Reynolds Tobacco Holdings, Inc.; R. J. Reynolds Global Products, Inc.; Reynolds American Inc.; and R. J. Reynolds Tobacco Company (a New Jersey corporation).

Respondents, who were Plaintiffs and Appellants in the courts below, are the European Community, Republic of Austria, Kingdom of Belgium, Republic of Bulgaria, Republic of Cypress, Czech Republic, Kingdom of Denmark, Republic of Estonia, Republic of Finland, French Republic, Federal Republic of Germany, Hellenic Republic, Republic of Hungary, Republic of Ireland, Italian Republic, Republic of Latvia, Republic of Lithuania, Grand Duchy of Luxembourg, Republic of Malta, Kingdom of the Netherlands, Republic of Poland, Portuguese Republic, Romania, Slovak Republic, Republic of Slovenia, Kingdom of Spain, and Kingdom of Sweden.

Pursuant to this Court's Rule 29.6, petitioners declare as follows:

R. J. Reynolds Tobacco Company (a North Carolina corporation) is successor by merger to R. J. Reynolds Tobacco Company (a New Jersey corporation) and is a wholly-owned subsidiary of R.J. Reynolds Tobacco Holdings, Inc., f/k/a RJR Nabisco, Inc. R.J. Reynolds Tobacco Holdings, Inc. is a wholly-owned subsidiary of Reynolds American Inc. ("RAI"), a publicly held corporation.

R. J. Reynolds Global Products, Inc., is an indirect, wholly-owned subsidiary of RAI, a publicly held corporation.

RJR Acquisition Corp., f/k/a Nabisco Group Holdings Corp., f/k/a RJR Nabisco Holdings Corp., merged into R.J. Reynolds Tobacco Holdings, Inc., f/k/a RJR Nabisco, Inc.

British American Tobacco p.l.c. and its subsidiaries collectively own more than 10% of the common stock of RAI.

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## OPINIONS BELOW

The district court's opinion dismissing the RICO claims in this case (Pet.App. 37a) appears at 2011 U.S. Dist. LEXIS 23538. The Second Circuit's merits opinion (Pet.App. 1a) is reported at 764 F.3d 129, and its opinion denying panel rehearing (Pet.App. 55a) is reported at 764 F.3d 149. The five opinions respecting the denial of rehearing en banc (Pet.App. 59a) are reported at 783 F.3d 123.

## JURISDICTION

The Second Circuit entered judgment on April 23, 2014. Pet.App. 1a. The panel denied rehearing and amended its opinion on August 20, 2014. Pet.App. 55a. The Second Circuit denied rehearing en banc on April 13, 2015. Pet.App. 59a. On July 6, 2015, Justice Ginsburg extended the time for filing this petition to and including July 27, 2015. Application No. 15A24. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## STATUTORY PROVISIONS INVOLVED

The text of RICO is set forth in the appendix. Pet.App. 105a.

## STATEMENT OF THE CASE

In *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010), this Court emphatically reaffirmed the presumption that federal statutes do not apply extraterritorially, chided the Second Circuit for its repeated disregard of that presumption, and squarely held that, "[w]hen a statute gives no clear indication of an extraterritorial application, it has none." *Id.* at 255. Applying the presumption, this Court further held that § 10(b) of the Securities

Exchange Act of 1934 has as its "focus" the purchase and sale of securities, and thus applies only to domestic purchases and sales. *See id.* at 265-70. Accordingly, the Court ordered dismissal of a "foreign cubed" complaint alleging that a foreign defendant had defrauded a foreign plaintiff in connection with a foreign securities transaction. *Id.*

This case presents the question whether RICO applies extraterritorially, and if so to what extent. Between *Morrison* and the decision below, dozens of lower-court decisions—including one from the Ninth Circuit—uniformly held that "RICO does not apply extraterritorially." *United States v. Xu*, 706 F.3d 965, 974-75 (9th Cir. 2013). Yet the panel in this case, in one fell swoop, extended RICO to foreign racketeering activity, foreign enterprises, *and* foreign injuries. In four separate opinions, five judges dissented from the denial of en banc to reconsider that breathtaking, foreign-cubed expansion of a major federal statute that itself sweepingly extends to scores of criminal offenses.

1. RICO, 18 U.S.C. § 1961 *et seq.*, prohibits four categories of conduct involving covered enterprises and patterns of racketeering activity. Section 1962(a) makes it unlawful for any person to invest income derived from a "pattern of racketeering activity" in an "enterprise." Section 1962(b) makes it unlawful for any person to acquire an "enterprise" through a "pattern of racketeering activity." Section 1962(c) makes it unlawful for any person to conduct the affairs of an "enterprise" through a "pattern of racketeering activity." Finally, § 1962(d) makes it unlawful for any person to conspire to violate any of the three preceding provisions.

RICO specifically defines the critical statutory terms of "enterprise" and "pattern of racketeering activity." A covered "enterprise" "includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." *Id.* § 1961(4). A covered "pattern of racketeering" consists of "at least two acts of racketeering activity" committed within ten years of one another. *Id.* § 1961(5). In turn, "racketeering activity" is defined to include "any act which is indictable under any of the following provisions of title 18," followed by a string-cite to well over 100 provisions. *Id.* § 1961(1)(B). That list includes many predicate offenses that apply only domestically, such as mail fraud, wire fraud, and the Travel Act, *id.* §§ 1341, 1343, 1952; some predicate offenses that apply both domestically and extraterritorially, such as money laundering and providing material support to foreign terrorist organizations, *id.* §§ 1956-57, 2332b(g)(5)(B), 2339B; and a few predicate offenses that apply only extraterritorially, such as the prohibition on engaging in illicit sexual activity "in foreign places," *id.* § 2423(c). RICO itself, however, is silent as to its own geographic scope.

RICO provides for a range of criminal and civil enforcement. Section 1963 imposes criminal penalties for violations of § 1962. Sections 1964(a) and (b) authorize the Attorney General to bring civil actions to prevent and restrain such violations. Finally, and most relevant here, § 1964(c) affords a private right of action—plus treble damages and attorneys' fees—to "[a]ny person injured in his business or property by reason of a violation of section 1962."

2. Petitioners in this case are the R.J. Reynolds Tobacco Company and various of its affiliated corporations. Respondents are the European Community ("EC") (now the European Union) and 26 of its Member States. Respondents sued petitioners under RICO; they allege that petitioners were involved in a worldwide scheme to launder the proceeds of illegal drug sales in Europe, and that this money-laundering scheme caused various harms to European governments in Europe.[1]

The alleged money-laundering scheme consisted of at least five discrete sets of transactions. First, foreign drug traffickers, located in Afghanistan, Colombia, the Middle East, and Russia, smuggled illegal narcotics into Europe and sold them there for Euros. Pet.App. 153a-154a. Second, the drug traffickers traded those Euros for other foreign currencies, in transactions with black-market money brokers also located in Europe. Pet.App. 156a-157a. Third, the money brokers sold the Euros to European cigarette importers. Pet.App. 157a.

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[1] The operative complaint in this case is the sixth filed by the EC in a series of successive cases. The first case, filed by the EC alone, was dismissed on the ground that the EC is not a proper party to complain about alleged injuries to its Member States. *European Cmty. v. RJR Nabisco, Inc.*, 150 F. Supp. 2d 456, 501-02 (E.D.N.Y. 2001). The second case, filed by the EC and 10 Member States, was dismissed on the ground that it sought recovery for the sovereign injuries of foreign governments, in violation of the revenue rule. *European Cmty. v. Japan Tobacco, Inc.*, 186 F. Supp. 2d 231, 236-45 (E.D.N.Y. 2002), *aff'd sub nom. European Cmty. v. RJR Nabisco, Inc.*, 355 F.3d 123 (2d Cir. 2004) (Sotomayor, J.), *vacated*, 544 U.S. 1012 (2005), *adhered to on remand*, 424 F.3d 175 (2d Cir. 2005) (Sotomayor, J.). These prior dismissals are not at issue here.

Fourth, the European importers used the funds to purchase cigarettes from cigarette wholesalers. *Id.* Fifth, the wholesalers in turn purchased cigarettes from petitioners, and shipped those cigarettes to the importers for retail sale in Europe. Pet.App. 159a-160a. According to the complaint, the cigarette wholesalers with whom petitioners conducted business were located in such foreign countries as Colombia, Croatia, Panama, and Venezuela. Pet.App. 167a, 172a, 175a, 177a, 191a-192a. The complaint also alleges that petitioners unlawfully sold cigarettes in Iraq, in territory controlled by a foreign terrorist organization. Pet.App. 178a-182a.

The complaint alleges a RICO "enterprise" made up of petitioners, drug traffickers, and "distributors, shippers, currency dealers, wholesalers, money brokers, and other participants" in the scheme described above. Pet.App. 238a-239a. It alleges a "pattern of racketeering activity" consisting of predicate acts of money laundering, mail fraud, wire fraud, Travel Act violations, and providing material support to foreign terrorist organizations. Pet.App. 239a-251a. The RICO violations allegedly caused 36 different injuries to European governments in Europe—including lost tax revenue, increased law-enforcement costs, various harms to their respective economies, and reduced profits to their state-owned tobacco businesses. Pet.App. 211a-228a.

3. The district court dismissed the RICO claims as impermissibly extraterritorial. Applying *Morrison*, the court reasoned that because "RICO is silent as to any extraterritorial application," it therefore "has none." Pet.App. 44a. Further applying *Morrison*, the court looked to the "focus" of RICO to determine

what constitutes a permissible domestic application of the statute. Pet.App. 45a-48a. The court held that, because RICO is focused on the "enterprise" that conducts or is affected by racketeering, the statute extends only to domestic enterprises. *Id.*

The court then concluded that the complaint in this case does not allege a domestic enterprise. To determine where an enterprise is located, the court applied the "nerve center" test from *Hertz Corp. v. Friend*, 559 U.S. 79 (2010), which focuses on where the corporation or enterprise is controlled. Pet.App. 48a. Here, the alleged money-laundering enterprise was controlled by foreign narcotics traffickers, with petitioners alleged to be "nothing more than sellers of fungible goods in a complex series of transactions directed by South American and Russian gangs." Pet.App. 52a.

4. On appeal, a panel of the Second Circuit reversed. Neither side—nor the United States as amicus—asked the court to hold that RICO applies extraterritorially. Rather, the only disputed issue was what constitutes a permissible domestic application of RICO. Yet the court of appeals, taking a different view from those expressed by the litigants and by all prior decisions, held that RICO *does* apply extraterritorially. Its original opinion extended the substantive provisions of RICO to extraterritorial patterns of racketeering activity and extraterritorial enterprises, and its opinion on rehearing further extended civil RICO to extraterritorial injuries. Thus, that court's ultimate rule was that civil RICO extends to *foreign* racketeering activity carried out by *foreign* enterprises and causing *foreign* injuries.

First, the panel extended RICO to extraterritorial patterns of racketeering activity. It held that "RICO applies extraterritorially if, and only if, liability or guilt could attach to extraterritorial conduct under the relevant RICO predicate." Pet.App. 9a. The panel reasoned that, by "incorporating" extraterritorial statutes "into RICO" as predicate acts of racketeering, Congress "clearly communicated its intention" that RICO itself apply extraterritorially. Pet.App. 11a. Moreover, the panel further reasoned that if RICO covered only domestic patterns of racketeering, then Congress's decision to incorporate exclusively extraterritorial predicate statutes would be inexplicable. Pet.App. 10a. In so extending RICO, the court severely limited its own prior precedent in *Norex Petroleum Ltd. v. Access Indus., Inc.*, 631 F.3d 29 (2d Cir. 2010) (per curiam), which had held that "RICO is silent as to any extraterritorial application," *id.* at 33 (citation omitted), and that, "'[w]hen a statute gives no clear indication of an extraterritorial application, it has none,'" *id.* (quoting *Morrison*, 561 U.S. at 255).

Next, the panel extended RICO to foreign enterprises. Without citing any textual basis, it reasoned that limiting RICO to domestic enterprises would be an "illogical" policy, because "[s]urely the presumption against extraterritorial application of United States laws does not command giving foreigners carte blanche to violate the laws of the United States in the United States." Pet.App. 14a.

Applying these rules, the panel held that the RICO counts in this case state viable claims. The panel reasoned that, because the money-laundering and material-support statutes by their terms apply

extraterritorially, RICO likewise applies to extraterritorial patterns of racketeering activity predicated on violations of those statutes. Pet.App. 17a-18a. The court acknowledged that the mail fraud, wire fraud, and Travel Act statutes do not apply extraterritorially, but it held that the complaint adequately alleged domestic violations of those statutes. Pet.App. 18a-24a.[2]

5. Petitioners sought rehearing on the ground that the panel had ignored one of their principal contentions—that regardless of the geographic scope of § 1962, plaintiffs seeking treble damages under § 1964(c) must allege a domestic injury.

In response, the panel issued a second opinion extending § 1964(c) to extraterritorial injuries. It reasoned that § 1964(c) extends to any injury "caused by predicate acts sufficiently related to constitute a pattern." Pet.App. 56a (quoting *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 497 (1985)). The panel further reasoned that the presumption against extraterritoriality is "primarily concerned with the question of what *conduct* falls within a statute's purview," and thus does not apply to the question whether a statutory private right of action extends to extraterritorial injuries. Pet.App. 58a.

6. Petitioners sought rehearing en banc. More than seven months later, the court denied it by an 8-5 vote, which prompted one published concurrence and four published dissents.

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[2] The court further held that the district court had erred in dismissing respondents' state-law claims for lack of subject-matter jurisdiction. Pet.App. 24a-36a; *see also* 814 F. Supp. 2d 189 (E.D.N.Y. 2011). That holding is not at issue here.

Judge Jacobs, writing for all five dissenters, argued that further review was appropriate given the "frequency of RICO litigation" in the Second Circuit and the "taut tension" between the panel opinion and prior decisions. Pet.App. 68a-69a.

Judge Cabranes, joined by Judges Jacobs, Raggi, and Livingston, explained that the panel decision was "flatly inconsistent with years of precedent" from this Court, which "treats RICO as an offense distinct from its predicate acts." Pet.App. 71a. "Although it is indisputable that Congress intended for certain RICO predicate statutes to apply to actions or events abroad, there is no clear basis for concluding that Congress intended for RICO itself to go along with them." *Id.* He summarized things as follows: "After more than four decades of experience with [RICO], a panel of our court has discovered and announced a new, and potentially far-reaching, judicial interpretation of the statute—one that finds little support in this history of the statute, its implementation, or the precedents of the Supreme Court; that will encourage a new litigation industry exposing business activities abroad to civil claims of 'racketeering'; and that will invite our courts to adjudicate civil RICO claims grounded on extraterritorial activities anywhere in the world." Pet.App. 73a-74a (footnotes omitted).

Judge Raggi, writing for the same four judges, further explained that the panel had misapplied *Morrison* and created a circuit split in doing so: "Since [*Morrison*], courts in this circuit and around the nation uniformly have held that [RICO] does not apply extraterritorially. These courts have sometimes differed in how they determined whether

a particular RICO application was domestic or extraterritorial, but their underlying assumption has been consistent: 'RICO is silent as to any extraterritorial application' and, therefore, 'it has none.'" Pet.App. 74a (quoting *Norex*, 631 F.3d at 33, and *Morrison*, 561 U.S. at 255). Accordingly, she urged further review both on the threshold question whether "RICO applies extraterritorially" at all and on the "criteria for determining whether a RICO claim is domestic or extraterritorial." Pet.App. 77a.[3]

## REASONS FOR GRANTING THE PETITION

Five years ago, this Court decisively rejected the "conduct" and "effects" tests previously used by the Second Circuit to determine the extraterritorial reach of various federal statutes, including the securities laws and RICO. *See Morrison*, 561 U.S. at 255-61. In their place, this Court required a two-step analysis more consistent with the presumption against extraterritoriality. First, to determine whether the presumption is overcome, a court must decide whether the statute at issue contains any "clear indication" that it applies extraterritorially. *Id.* at 255, 265. If not, the court then must determine what qualifies as a domestic application of the statute at issue. *See id.* at 266. To do so, it must identify what elements are the "focus" of the statute, and those elements apply only domestically. *See id.* at 268. Thus, because § 10(b) of the Exchange Act

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[3] Separately dissenting, Judge Lynch agreed that the panel decision was "deeply in tension" with *Norex*, but reserved judgment on which of the two is correct. Pet.App. 103a. Only Judge Hall—a member of the original panel—defended the panel opinion. Pet.App. 60a.

focuses on the purchase and sale of securities, it applies only to domestic purchases and sales of securities (or to purchases and sales of securities listed on a U.S. exchange), regardless of where any fraudulent conduct occurred or where the plaintiff or defendant resides. *See id.* at 269-70.

In seeking to apply the *Morrison* framework to RICO, the lower courts have reached broad agreement in one respect, but are deeply divided in another. Prior to the panel decision below, the courts had unanimously concluded at step one of *Morrison* that RICO "does not apply extraterritorially." *Xu*, 706 F.3d at 974-75. At step two, however, the courts sharply divided over how to distinguish between domestic and extraterritorial applications. The Ninth Circuit and numerous district courts concluded that the sole "focus" of RICO is the pattern of racketeering activity. These courts thus held that RICO applies only to domestic racketeering, but extends to foreign enterprises. Other courts, including the district court below, concluded that the "focus" of RICO is the enterprise, and thus held that RICO applies only to domestic enterprises, but extends to foreign racketeering. The United States, for its part, argued below that the "focus" of RICO is *both* the pattern of racketeering and the enterprise, and that § 1962 thus applies if *either* of them is domestic. Br. for United States as *Amicus Curiae* in Support of Neither Party 9-15, *RJR Nabisco, Inc.*, 764 F.3d 129 (No. 11-2475) ("U.S. Br."). And no court, to our knowledge, had extended RICO's civil cause of action to extraterritorial injuries.

In this case, the Second Circuit held, contrary to the Ninth Circuit and every other court to have

considered the issue, that there *is* a "clear indication" that RICO applies to extraterritorial patterns of racketeering activity, at least to the same extent as do the underlying predicate offenses. Moreover, the court further extended RICO to extraterritorial enterprises and injuries, thus authorizing civil RICO actions based on *foreign* patterns of racketeering conducted through *foreign* enterprises and causing *foreign* injuries. This is just such a case: The complaint alleges a far-flung scheme in which narcotics traffickers located in South America, Europe, and Asia laundered proceeds from illegal drug sales in Europe and thereby caused harm to European governments in Europe. Only under the Second Circuit's novel and expansive approach would such allegations state a claim under civil RICO.

This Court's intervention is warranted for four reasons. *First*, the lower courts are now divided on both the threshold question whether RICO applies extraterritorially at all and on the related question of which elements of a civil RICO claim must be domestic. *Second*, the question of RICO's geographic scope is recurring and important—which is why the United States filed an unsolicited amicus brief below, and why five circuit judges urged rehearing en banc. *Third*, this case presents an ideal vehicle for resolving that question: The lengthy opinions below fully address all the pertinent issues, and the case squarely implicates all the statutory elements (enterprise, pattern, *and* injury) that might constitute the relevant "focus" of civil RICO. *Fourth*, the Second Circuit's approach is profoundly wrong: Its foreign-cubed expansion of RICO misreads the statute, contravenes *Morrison*, and once again degrades the presumption against extraterritoriality.

## I. THE LOWER COURTS ARE DEEPLY DIVIDED OVER WHETHER AND HOW RICO APPLIES EXTRATERRITORIALLY

Even before the panel decision below, courts and commentators had noted the confusion in the lower courts over how to apply *Morrison* to RICO. *See, e.g.*, *Borich v. BP, P.L.C.*, 904 F. Supp. 2d 855, 861 (N.D. Ill. 2012) ("courts have divided" on issue); Gideon Mark, *RICO's Extraterritoriality*, 50 AM. BUS. L.J. 543, 544 (2013) (courts "have split sharply"). And the opinion below significantly deepened the split, by introducing yet another approach that expands RICO's geographic reach even farther. This Court's review is needed to resolve this three-way conflict and to clarify the outer bounds of RICO's potent civil cause of action.

### A. *Morrison* Rejected The "Conduct" And "Effects" Tests That Lower Courts Had Used To Determine RICO's Extraterritorial Scope

1. *Morrison* considered whether and how § 10(b) of the Exchange Act applies to foreign conduct. For decades, the lower courts, following the lead of the Second Circuit, had used a combination of two "complex" and "unpredictable" tests to determine which extraterritorial securities frauds were covered. *Morrison*, 561 U.S. at 256. An "effects test" asked whether the conduct had a "substantial effect" in the United States, and a "conduct test" asked whether material or significant contributing conduct occurred in this country. *See id.* at 257-58. The courts used that same analysis to determine the extraterritorial scope of various other federal statutes, including RICO. *See, e.g.*, *id.*; *N. S. Fin. Corp. v. Al-Turki*, 100 F.3d 1046, 1051 (2d Cir. 1996).

This Court squarely rejected those tests as "unpredictable," "inconsistent," without basis in statutory text, and contrary to the longstanding presumption that Congress does *not* generally mean to apply federal statutes extraterritorially. *See* 561 U.S. at 260-61. In their place, the Court set forth a different approach that would "preserv[e] a stable background against which Congress can legislate." *Id.* at 261.

In particular, the Court first asked whether the presumption against extraterritoriality had been overcome by some "affirmative indication" in the statute, such as "a clear statement of extraterritorial effect" or "clear indication" from other "sources of statutory meaning." *Id.* at 265. For § 10(b) of the Exchange Act, the answer was no—despite its "reference to foreign commerce," another reference to foreign countries in the Act's statement of purposes, and a statutory exception that appeared to presume some extraterritorial application. *Id.* at 263. None of those features sufficed as a "clear" and "affirmative" indication of extraterritorial coverage to rebut the presumption. *See id.* at 265.

After concluding that § 10(b) does not "apply extraterritorially," the Court next inquired whether the disputed application was extraterritorial or domestic. *Id.* at 266. After all, applying the presumption against extraterritoriality is often "not self-evidently dispositive," for "it is a rare case of prohibited extraterritorial application that lacks *all* contact with the territory of the United States." *Id.* The critical second question is thus: What connection to the United States is necessary to make the contested application *domestic*?

The Court made clear that one cannot evade the presumption against extraterritorially simply by alleging "*some* domestic activity." *Id.* Rather, "the focus" of the statutory provision—the element or elements that are "the objects of the statute's solicitude"—must be domestic in the disputed application at issue. *Id.* at 267. Thus, because the "focus" of § 10(b) is on "transactions in securities," a domestic application of that provision is one that involves transactions in the United States or securities sold on United States exchanges. *Id.* Accordingly, § 10(b) applies only to such domestic transactions, and the presence of upstream or downstream conduct or effects in the United States does not extend that provision to otherwise extraterritorial transactions. *See id.* at 266-70.

2. *Morrison* significantly changed the law used by lower courts to determine the geographic scope of RICO. As noted above, the courts of appeals had previously applied the same "conduct" and "effects" tests that *Morrison* condemned. *See* Mark, *supra*, at 543 ("courts commonly analyzed RICO's extraterritoriality by borrowing two tests from securities and antitrust law—'conduct' and 'effects'"); *Al-Turki*, 100 F.3d at 1051 (using conduct and effects tests to determine extraterritorial scope of RICO); *Poulos v. Caesars World, Inc.*, 379 F.3d 654, 663 (9th Cir. 2004) (in RICO case, looking to "tests used to assess the extraterritorial application of the securities laws"). By emphatically rejecting the "conduct" and "effects" tests, *Morrison* "threw the tests for extraterritorial application of RICO into flux." Anneka Huntley, *RICO's Extraterritoriality After Morrison: Where Should We Go from Here?*, 65 HASTINGS L.J. 1691, 1700-01 (2014).

### B. Most Courts Now Refuse To Apply RICO Extraterritorially, But Disagree On What Constitutes A Domestic Application

In attempting to apply *Morrison* to RICO, "the lower courts have been 'all over the board' producing 'the very confusion and variation in standards' the Supreme Court hoped to remedy by rendering the decision." Melvin L. Otey, *Why RICO's Extraterritorial Reach Is Properly Coextensive with the Reach of Its Predicates*, 14 J. INT'L BUS. & L. 33, 34 (2015). Until the panel decision in this case, courts "around the nation uniformly ha[d] held that [RICO] does not apply extraterritorially," since the statute contains no clear indication of any extraterritorial sweep. Pet.App. 74a (Raggi, J., dissenting from denial of en banc). But the courts disagreed about what is RICO's "focus," and thus divided on the equally important question of what constitutes a "domestic" application of the statute.

1. Prior to the decision below, every court to consider the question had held, under the first step of *Morrison*, that RICO contains no "clear indication of an extraterritorial application" and therefore "has none." 561 U.S. at 255.

In *Xu*, the Ninth Circuit squarely held that RICO does not apply extraterritorially. As that court explained, "courts that have addressed the issue" since *Morrison* "have uniformly held that RICO does not apply extraterritorially." 706 F.3d at 974. The Ninth Circuit embraced these decisions as "faithful to *Morrison*'s rationale"—because "RICO is silent as to its extraterritorial application," it follows that "RICO does not apply extraterritorially in a civil or criminal context." *Id.* at 974-75. Likewise, in *CGC*

*Holding Co. v. Broad & Cassel*, the Tenth Circuit noted uniform precedent, the district court's holding, and the parties' agreement "that RICO does not apply extraterritorially." 773 F.3d 1076, 1097 (10th Cir. 2014). The court then discussed at length the division of authority on the step-two question of "identifying the 'focus' of RICO," which determines what constitutes a domestic application, but ultimately reserved judgment on that latter question. *See id.* at 1097-98.

District courts across the country likewise have held that RICO does not apply extraterritorially. *E.g.*, *Hourani v. Mirtchev*, 943 F. Supp. 2d 159, 164 (D.D.C. 2013) ("courts have uniformly concluded" that "RICO does not apply extraterritorially"); *Mitsui O.S.K. Lines, Ltd. v. Seamaster Logistics, Inc.*, 871 F. Supp. 2d 933, 937 (N.D. Cal. 2012) ("courts have uniformly held that RICO is silent as to its extraterritorial application and that, under *Morrison*, it therefore has none"); *Sorota v. Sosa*, 842 F. Supp. 2d 1345, 1348 (S.D. Fla. 2012) ("Sosa argues that, because RICO ... is silent with respect to extraterritorial application, it has no such application. Every court to consider this argument after *Morrison* has embraced it."); *Adhikari v. Daoud & Partners*, No. 09-cv-1237, 2013 U.S. Dist. LEXIS 189601, at *23 (S.D. Tex. Aug. 23, 2013) ("post-*Morrison* courts have uniformly held that RICO does not apply extraterritorially"); *In re Le-Nature's, Inc. v. Krones, Inc.*, No. 09-cv-1445, 2011 U.S. Dist. LEXIS 56682, at *13-14 (W.D. Pa. May 26, 2011) ("Because the RICO statute does not contain evidence that Congress intended extraterritorial

application, *Morrison* has been held to preclude such application.").[4]

2. While the lower courts had agreed that RICO does not apply extraterritorially, they disagreed at *Morrison*'s important second step—*i.e.*, how to distinguish a permissible domestic application of RICO from an impermissible extraterritorial one. As *Morrison* explained, applying the presumption often "requires further analysis," because merely alleging "*some* domestic activity" is not sufficient to establish the domestic application of a statute. 561 U.S. at 266. Rather, the domestic activity must encompass the statutory "focus." *Id.* But the lower courts have found it "unclear how *Morrison*'s logic ... precisely translates to RICO." *Toyota Motor*, 785 F. Supp. 2d at 914-15.

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[4] *See also In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 935 F. Supp. 2d 666, 731 (S.D.N.Y. 2013) ("RICO does not apply extraterritorially."); *Republic of Iraq v. ABB AG*, 920 F. Supp. 2d 517, 543 (S.D.N.Y. 2013) ("The RICO statutes do not apply extraterritorially."); *Chevron Corp. v. Donziger*, 871 F. Supp. 2d 229, 239 (S.D.N.Y. 2012) ("presumption against extraterritorial application governs in RICO cases"); *In re Toyota Motor Corp.*, 785 F. Supp. 2d 883, 913 (C.D. Cal. 2011) ("there can be no dispute that RICO is silent as to its extraterritorial application" and thus "RICO *does not* apply extraterritorially"); *United States v. Philip Morris USA, Inc.*, 783 F. Supp. 2d 23, 28-29 (D.D.C. 2011) ("there is no evidence that Congress intended to criminalize foreign racketeering activities under RICO"); *Cedeno v. Intech Grp., Inc.*, 733 F. Supp. 2d 471, 473 (S.D.N.Y. 2010) (RICO not "sufficiently clear to overcome the presumption against extraterritoriality"); *Goodwin v. Bruggeman-Hatch*, No. 13-cv-02973, 2014 U.S. Dist. LEXIS 108911, at *23 (D. Colo. June 2, 2014) ("RICO does not apply to extraterritorial conduct").

In particular, a conflict developed between two alternative approaches. *See Chevron Corp. v. Donziger*, 974 F. Supp. 2d 362, 571 (S.D.N.Y. 2014) ("The decisions to have considered the matter have taken essentially one of two approaches to determining whether application of RICO to situations involving conduct both in the United States and abroad would be extraterritorial."). Some courts, including the Ninth Circuit, held that the sole statutory focus of RICO is the "pattern of racketeering activity," so that RICO requires a domestic pattern but not a domestic enterprise. Other courts, like the district court below, concluded that RICO is focused on the "enterprise" affected or implicated by racketeering, so that RICO covers only domestic enterprises. Finally, some commentators and parties (including petitioners) have argued that the "focus" of a *civil* cause of action under RICO is the plaintiff's injury, so that § 1964(c) applies only to domestic injuries. Prior to the decision below, no court (to our knowledge) had addressed that contention one way or the other.

a. The Ninth Circuit and various district courts in other circuits have held that RICO applies only to domestic patterns of racketeering activity.

In *Xu*, the Ninth Circuit explained that courts to have addressed the issue have "fall[en] essentially into two camps"—one looking solely to the location of the enterprise, the other solely to the location of the pattern of racketeering activity. 706 F.3d at 975. After thorough analysis, it rejected the former and adopted the latter. *Id.* at 977. The Ninth Circuit described RICO as designed to "punish patterns of organized criminal activity in the United States." *Id.*

at 978. By contrast, that court criticized the "enterprise" test, despite its "administrative ease, familiarity, and consistency," as promoting what the court regarded as "absurd results"—*i.e.*, immunizing foreign groups carrying out illegal acts in the United States. *Id.* at 977.

Applying these principles, the Ninth Circuit held that the pattern of racketeering activity alleged in the *Xu* case, "to the extent it was predicated on extraterritorial activity" in China, was "beyond the reach of RICO." *Id.* at 978. Moreover, the court reached that conclusion even though the predicate acts included a money-laundering conspiracy. *See id.* at 973, 993. On the other hand, § 1962 did apply to the extent that the "pattern of racketeering activity" was "executed and perpetrated in the United States." *Id.* at 979. The court thus held that it was "constitutional error" to allow the jury to convict the defendants based on "extraterritorial activity," but it ultimately concluded that this error was harmless. *Id.* at 979 n.2. Finally, the court concluded that the location of what it described as the "international enterprise" at issue (*id.* at 974) was irrelevant to the geographic scope of RICO. *See id.* at 978-79. *See also Howard v. Maximus, Inc.*, No. 3:13-cv-01111, 2014 U.S. Dist. LEXIS 109199, at *13-14 (D. Ore. May 6, 2014) ("the Ninth Circuit chose to join those courts focusing on the location of the racketeering").

Various district courts have followed this same approach. In *CGC Holding Co. v. Hutchens*, for example, the court adopted the pattern test and refused to dismiss a RICO suit against an enterprise allegedly based in Canada, because the plaintiff had alleged a pattern of racketeering that "largely

occurred within the United States." 824 F. Supp. 2d 1193, 1209 (D. Colo. 2011). Conversely, in *Hourani*, the court adopted the pattern test and dismissed a RICO claim against a domestic enterprise because the alleged pattern of racketeering activity had occurred in Kazakhstan. 943 F. Supp. 2d at 165-66. And in *Borich*, which likewise concluded that the "proper focus" of RICO "is the pattern of racketeering activity," the court simply ignored the alleged "[f]oreign racketeering activity" in order to determine whether the plaintiff had stated a valid RICO claim. 904 F. Supp. 2d at 861-62.

b. Various other courts have held that the correct approach for determining RICO's territorial coverage is to assess the location of the enterprise. Under this approach, domestic enterprises may be liable for foreign acts of racketeering, but foreign enterprises are not liable for domestic acts of racketeering.

The enterprise approach was developed by Judge Rakoff, who literally wrote the book on RICO. *See* J. Rakoff & H. Goldstein, RICO: CIVIL AND CRIMINAL LAW AND STRATEGY (2015). In *Cedeno*, Judge Rakoff reasoned that the "focus of RICO is on the enterprise as the recipient of, or cover for, a pattern of criminal activity." 733 F. Supp. 2d at 474. He based that conclusion on the text and structure of RICO, which prohibits patterns of racketeering only insofar as they "impact an enterprise" in particular ways. *Id.* at 473-74. Accordingly, he concluded, RICO applies only to domestic enterprises. *Id.* at 474 ("RICO does not apply where, as here, the alleged enterprise and the impact of the predicate activity upon it are entirely foreign."). He therefore dismissed civil

RICO claims alleging that an enterprise based in Venezuela had committed a pattern of racketeering activity in part in the United States. *See id.*

Although *Cedeno* was superseded in the Second Circuit by the decision below, courts elsewhere have adopted its holding—again, with real practical consequences. For example, in *Le-Nature's*, a district court in Pennsylvania refused to dismiss a claim based on an alleged pattern of racketeering in Germany, because "the alleged enterprise was domestic, and within the ambit of RICO." 2011 U.S. Dist. LEXIS 56682, at *18. Conversely, a district court in Florida dismissed a RICO claim alleging that a Peruvian enterprise had carried out a pattern of racketeering activity in Florida. *See Sorota*, 842 F. Supp. 2d at 1350 (reasoning that plaintiff "alleges a foreign—not a domestic—RICO enterprise," leading to dismissal "regardless of where the predicate acts of racketeering occur"). *Accord Bhari Info. Tech. Sys. Private Ltd. v. Sriram*, 984 F. Supp. 2d 498, 504 (D. Md. 2013) (dismissing RICO claim where "the *enterprise* through which the RICO violations occurred" was not sufficiently domestic).

c. Finally, for private damages actions under RICO, a separate extraterritoriality question arises: whatever the geographic scope of the substantive provisions in § 1962, whether the cause of action in § 1964(c) extends to extraterritorial injuries.

Soon after *Morrison* was decided, one prominent commentator argued that its logic "should limit RICO's future application to cases in which the conduct of the foreign enterprise causes *injuries* in the U.S." John C. Coffee, Jr., *What Hath 'Morrison' Wrought?*, N.Y.L.J., Sept. 16, 2010 (emphasis added);

*see also id.* ("For the future, ... the appropriate focus should be whether victims were injured in the United States."). Prior to the decision below, no court (to our knowledge) had extended § 1964(c) to extraterritorial injuries, and not even the United States, as amicus below, sought such an extension. *See* U.S. Br. at 3 n.2.

### C. The Second Circuit Held That RICO *Does* Apply Extraterritorially, And That *No* Domestic Link Need Be Alleged or Proved

The Second Circuit adopted none of these three possible positions. Instead, it entirely "untether[ed] RICO from its mooring on United States shores." Pet.App. 75a (Raggi, J., dissenting from denial of en banc). Accordingly, civil RICO claims based on *foreign* patterns of racketeering activity conducted through *foreign* enterprises and causing *foreign* injuries—the RICO equivalent to what Justice Stevens in *Morrison* called "foreign-cubed" securities suits, 561 U.S. at 283 n.11 (Stevens, J., concurring in judgment)—are now viable in the Second Circuit.

1. Although all other courts had readily concluded that RICO contains no clear indication of extraterritorial coverage, the panel held that "RICO applies extraterritorially" to the extent that "liability or guilt could attach to extraterritorial conduct under the relevant RICO predicates." Pet.App. 9a. The panel reasoned that Congress, by "explicitly incorporating" extraterritorial statutes into RICO's definition of "racketeering activity," thereby manifested a clear intent to give the "pattern of racketeering activity" comparable extraterritorial coverage. Pet.App. 9a-10a ("when a RICO claim depends on violations of a predicate statute that

manifests an unmistakable congressional intent to apply extraterritorially, RICO will apply to extraterritorial conduct, too"). Thus, because the money-laundering and material-support statutes are expressly extraterritorial, *see* 18 U.S.C. §§ 1956(f), 2339B(d)(2), RICO covers patterns of racketeering activity predicated on the violation of those statutes.

Moreover, the panel further extended RICO to extraterritorial enterprises and injuries. Its original opinion did not dispute that the complaint had alleged a foreign enterprise, but rejected the requirement of a domestic enterprise as "illogical." Pet.App. 14a. Similarly, in denying panel rehearing, the panel squarely held that "RICO imposes no such requirement" of a "domestic injury." Pet.App. 55a.

As a result of those holdings, all of the RICO allegations in the complaint were held to state viable claims: Although the complaint was based on allegations that a foreign enterprise committed acts of racketeering abroad and injured European governments within their own territory, the complaint was viable simply because it alleged violations of extraterritorial criminal predicates.

2. The Second Circuit's triply-extraterritorial expansion of RICO conflicts with the rule *everywhere else*, and the conflict is not merely theoretical. For example, the indictment in *Xu* would now survive in the Second Circuit, because the racketeering predicates in China included money-laundering offenses, *see* 706 F.3d at 978—the same expressly extraterritorial offenses principally alleged here. So too would the claims that were dismissed in *Hourani*, where the plaintiffs alleged money laundering in Kazakhstan, 943 F. Supp. 2d at 160, 167; in *Iraq*,

where the plaintiffs alleged money laundering in Iraq, 920 F. Supp. 2d at 545-46; or in *Cedeno*, where the plaintiffs alleged money laundering in Venezuela, 733 F. Supp. 2d at 473.[5]

* * *

In sum, "[l]ower courts have been struggling to apply RICO extraterritorially in the absence of further guidance from the Supreme Court, and their efforts have produced a sharp split regarding how its reach should be discerned." Otey, *supra*, at 52. This three-way split on the extraterritorial scope of a major federal statute—with the Second Circuit taking the most radically expansive view—cannot be resolved without this Court's intervention.

## II. THE QUESTION PRESENTED HAS GREAT SIGNIFICANCE

The geographic scope of RICO also warrants this Court's attention because it is recurring and important. RICO litigation is common, and the opinion below broadly opens the door for civil plaintiffs to target, in U.S. courts, business practices across the globe—thereby threatening the very international discord and litigation bonanza that *Morrison* sought to prevent.

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[5] The panel commented that its extension of RICO to extraterritorial *enterprises* "accords with" *Xu*, "although on different reasoning." Pet.App. 16a n.6. However, the panel neglected to mention that *Xu* expressly requires a domestic *pattern of racketeering activity*, 706 F. 3d at 975-79, whereas the panel here expressly rejected that requirement, Pet.App. 9a-14a.

### A. The Extraterritorial Scope Of RICO Arises Frequently In Federal And State Courts

Judge Jacobs cited the "frequency of RICO litigation in this Circuit" as justifying further review by his court. Pet.App. 69a (dissenting from denial of en banc). By the same token, the frequency of RICO litigation nationwide is among the reasons why this Court should review the basic question about its geographic scope.

In just the five years since *Morrison*, three courts of appeals have discussed how to apply it to RICO (the Ninth Circuit in *Xu*, the Tenth in *CGC Holding*, and the Second in this and several other cases). More than a dozen district courts throughout the country have also done so. And even since the Second Circuit issued its decision below, a half-dozen cases in that circuit have relied on it—not just in the civil RICO context, but also by extending its analytical approach to other statutes. *E.g.*, *United States v. Ahmed*, No. 12-CR-661, 2015 U.S. Dist. LEXIS 36973, at *25 (E.D.N.Y. Mar. 24, 2015) (18 U.S.C. § 924(c) applies extraterritorially to same extent as its predicates).

Moreover, this question affects considerable *state*-court litigation, too. Many states have enacted their own versions of RICO, and federal authority is highly persuasive for courts applying those statutes. *See, e.g.*, *Arthur v. JP Morgan Chase Bank, N.A.*, 569 F. App'x 669, 681 & n.12 (11th Cir. 2014) (finding it "unlikely" that Florida Supreme Court would apply Florida's RICO statute extraterritorially in light of *Morrison*, since federal law is "persuasive when interpreting the Florida RICO Act").

### B. The Decision Below Threatens The Adverse Impacts That The Presumption Against Extraterritoriality Is Designed To Prevent

The decision below also opens the door to a *type* of civil litigation that will adversely affect important American interests—which is exactly why *Morrison* presumed Congress did not authorize it.

Specifically, the panel decision "invite[s] our courts to adjudicate civil RICO claims grounded on extraterritorial activities anywhere in the world." Pet.App. 73a-74a (Cabranes, J., dissenting from denial of en banc). Its rule authorizes plaintiffs to sue for "overseas" conduct by a "foreign enterprise," Pet.App. 75a (Raggi, J., dissenting from denial of en banc)—even when nobody in the United States has suffered an injury. Reported cases confirm that this is not mere speculation. Citing the panel opinion, courts over the last year have permitted RICO claims based on everything from political oppression in Ukraine, *see Tymoshenko v. Firtash*, 57 F. Supp. 2d 311, 324-25 (S.D.N.Y. 2014) (allowing plaintiffs to amend complaint in light of panel opinion, despite prior dismissal on extraterritoriality grounds), to bribery of Venezuelan officials, *see Reich v. Lopez*, 38 F. Supp. 3d 436, 447-48 (S.D.N.Y. 2014). By contrast, before the panel decision, courts had dismissed RICO claims arising from, *e.g.*, a Jordanian entity's racketeering in the Middle East that harmed citizens of Nepal, *Adhikari*, 2013 U.S. Dist. LEXIS 189601, at *22-26; a money-laundering scheme in connection with the Oil-for-Food program that harmed the Republic of Iraq, *Iraq*, 920 F. Supp. 2d at 545-46; and an extortion and money-laundering operation in Kazakhstan that caused harm there,

*Hourani*, 943 F. Supp. 2d at 167-68. If filed in the Second Circuit today, those claims would survive. Pet.App. 72a n.8 (Cabranes, J., dissenting from denial of en banc) (describing panel as "welcom[ing] such claims into federal court"). The whole world is now the oyster of RICO plaintiffs' lawyers.

For two reasons, this global expansion of RICO will "have a significant and long-term adverse impact." Pet.App. 69a (Cabranes, J., dissenting from denial of en banc). *First*, as this Court warned in *Morrison*, it threatens to turn the United States into "the Shangri-La ... for lawyers" around the world. 561 U.S. at 270. Indeed, given RICO's authorization of treble damages and shifting of attorneys' fees, 18 U.S.C. § 1964(c)—as well as its status as "one of America's most powerful statutes," Otey, *supra*, at 34—the concern should be even greater for RICO than for securities claims. *Cf. Miranda v. Ponce Fed. Bank*, 948 F.2d 41, 44 (1st Cir. 1991) ("Civil RICO is an unusually potent weapon—the litigation equivalent of a thermonuclear device."). And RICO's broad venue rules, which permit suit in any district where the defendant "resides, is found, has an agent, or transacts his affairs" (18 U.S.C. § 1965(a)), will make it particularly easy for plaintiffs anywhere around the globe to file future RICO actions against large American corporations in New York. Hence Judge Cabranes' apt warning that the decision will "encourage a new litigation industry." Pet.App. 73a (dissenting from denial of en banc).

*Second*, extraterritorial application of U.S. law causes "clashes between our laws and those of other nations which could result in international discord." *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248

(1991). That is certainly true of RICO: While the EC here seeks to invoke that statute overseas, any victory would be "pyrrhic," because "its citizens ... are among the likely targets of future RICO actions under the panel's interpretation of the statute." Pet.App. 70a (Cabranes, J., dissenting from denial of en banc). RICO's expansion thus poses a "danger of unwarranted judicial interference in the conduct of foreign policy." *Kiobel v. Royal Dutch Shell Petroleum Co.*, 133 S. Ct. 1659, 1664 (2013).

In short, "[r]esolution to the question of RICO's extraterritorial reach is absolutely vital to American interests." Otey, *supra*, at 34.

## III. THIS IS A GOOD VEHICLE TO ADDRESS RICO'S EXTRATERRITORIAL REACH

For three reasons, this is an ideal case to address the question presented: The issue manifestly matters; the facts vividly illustrate the effects of the panel's radical rule; and the various arguments were exhaustively developed below.

*First*, resolution of the question presented would materially affect disposition of this case. Limiting RICO to domestic *patterns* of racketeering activity would substantially narrow the case. As the panel itself acknowledged, much of this case rests on allegations of money laundering outside the United States. Pet.App. 4a, 16a. Limiting RICO to domestic *enterprises* also would substantially narrow the case. In fact, the only "enterprise" actually alleged in the complaint consists of an "association-in-fact" made up of petitioners, drug traffickers, and "associated distributors, shippers, currency dealers, wholesalers, money brokers, and other participants" working together to launder the proceeds of illegal drug sales

in Europe. Pet.App. 239a. The district court squarely held that this alleged enterprise was foreign, Pet.App. 51a-52a, and the Second Circuit did not question that holding, Pet.App. 14a.[6] Finally, limiting civil RICO to domestic *injuries* would result in outright dismissal, as the complaint rests entirely on injuries allegedly suffered by respondents in Europe. Pet.App. 211a-228a. Thus, only under the Second Circuit's radically expansive approach could the complaint survive in anything remotely resembling its current form. (Of course, if this Court were to hold that RICO does not apply extraterritorially, and announce the appropriate rule for determining what constitutes a permissible domestic application of RICO, it could leave for the lower courts on remand the task of parsing the complaint to determine which small parts of it, if any, would survive.)

*Second*, the extreme facts of this case make it an ideal vehicle for appreciating the consequences of the Second Circuit's rule. As explained, respondents' claim rests principally on allegations of drug trafficking and money laundering in *Europe*, *South*

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[6] In denying rehearing, the panel briefly suggested that the complaint also states a violation of § 1962(a) based on the alleged investment of racketeering proceeds in a domestic "enterprise" defined as the Brown & Williamson Tobacco Company ("B&W"). Pet.App. 13a n.5. However, the § 1962(a) allegations in the complaint rest entirely on the foreign "association-in-fact" enterprise discussed above. Pet.App. 238a-239a, 252a-254a. More importantly, a claim under § 1962(a), if based on the investment in B&W, would not suggest any domestic enterprise that could support RICO claims under § 1962(b) or (c).

*America*, and *the Middle East*. At its heart is an alleged enterprise based in *Russia* and *Colombia*. And it alleges injuries to sovereign European nations in *Europe*. It is hard to imagine a case that Congress is less likely to have invited into U.S. courts. Yet, according to the panel below, Congress *clearly indicated* its intent to do so.

*Third*, the issue was exhaustively developed below. Petitioners moved to dismiss the complaint on extraterritoriality grounds; respondents opposed; petitioners replied; and the parties filed supplemental briefs after *Morrison* was decided. *See* Dkts. 84, 87, 95, 97, 99. The issue was exhaustively addressed in the opinion by the district court (Pet.App. 44a-52a); in an amicus filing by the United States; in two separate opinions by the Second Circuit panel (Pet.App. 7a-24a, 55a-58a); and in five separate opinions respecting the denial of en banc (Pet.App. 59a-104a). In sum, no further percolation is necessary to sharpen the question presented.

## IV. THE DECISION BELOW IS WRONG

The panel decision misunderstands RICO, contravenes *Morrison*, and once again degrades the presumption against extraterritoriality. "RICO is silent as to its extraterritorial application." *Xu*, 706 F.3d at 974. That alone should end the inquiry, for "[w]hen a statute gives no clear indication of an extraterritorial application, *it has none*." *Morrison*, 561 U.S. at 255 (emphasis added). Yet here, rather than conclude that RICO has *no* extraterritorial reach, the panel below made it triply extraterritorial. Each of those extensions was wrong.

A. The "pattern of racketeering" provisions of RICO give no hint of an extraterritorial application,

as those provisions nowhere address their own geographic scope. To the contrary, RICO simply defines the predicate "racketeering activity" comprising the "pattern" as including "any" act that is indictable under vast swaths of Title 18. *See* 18 U.S.C. § 1961(1)(B). And, of course, "it is well established that generic terms like 'any' or 'every' do not rebut the presumption against extraterritoriality." *Kiobel*, 133 S. Ct. at 1665.

The panel below nonetheless chose "to make the extraterritorial application of RICO coextensive with the extraterritorial application of the relevant predicate statutes." Pet.App. 15a. It reasoned that any congressional intent to make a predicate statute extraterritorial necessarily carries over to RICO itself, with the courts effectively "looking through" to the underlying predicate statutes. *See id.*

The fundamental flaw in that approach is that RICO is not "an aggravating statute that simply adds new consequences to the predicate offenses." Pet.App. 77a (Raggi, J., dissenting from denial of en banc). To the contrary, "that premise, from which the rest of the panel's analysis flows," is "at odds" with various lines of precedent, including cases holding that prosecution for predicate offenses creates no double-jeopardy bar to a RICO prosecution. *Id.*; *see also* Pet.App. 71a (Cabranes, J., dissenting from denial of en banc) (RICO "prohibits distinct behavior"); *Cedeno*, 733 F. Supp. 2d at 474 ("RICO is not a recidivist statute designed to punish someone for committing a pattern of multiple criminal acts."). Accordingly, the clear congressional intent to make some predicate statutes extraterritorial cannot substitute for what *Morrison*

requires: clear congressional intent to make *RICO itself* extraterritorial. And the panel's contrary conclusion "may allow an end-run around the revivified presumption against extraterritoriality in *Morrison* and *Kiobel*." Pet.App. 71a (Cabranes, J., dissenting from denial of en banc).

Alternatively, the panel reasoned that the incorporation of predicate statutes that are *exclusively* extraterritorial would be nonsensical if RICO was limited to domestic patterns of racketeering activity. Pet.App. 10a. But, as Judge Raggi explained, foreign acts of racketeering, even if not independently actionable, can help show that domestic acts exhibit the necessary relatedness and continuity to constitute a pattern. Pet.App. 90a-91a (dissenting from denial of en banc); *see also H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239-41 (1989) (addressing relatedness and continuity). In any event, even if RICO extended to patterns of racketeering activity based on the violation of *exclusively* extraterritorial predicate statutes, that would provide no support for *further* extending RICO to patterns of racketeering activity based on violation of predicate statutes that apply domestically and extraterritorially, which do not even arguably raise the same concern about meaningless incorporation. That is so because, even where a statute has *some* extraterritorial effect, the presumption still "remains instructive" in determining its "*extent*." *Microsoft v. AT&T Corp.*, 550 U.S. 437, 456 (2007). And here, the alleged pattern of racketeering activity involves no predicate statutes that are exclusively extraterritorial.

B. The panel erred further in extending RICO to extraterritorial enterprises. In pertinent part, RICO defines covered enterprises as including "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. §1961(4). Not a word of that definition suggests extraterritorial application, much less does so clearly and affirmatively. *See Kiobel*, 133 S. Ct. at 1665. Nor, of course, do the panel's policy arguments about what might or might not be "illogical" (Pet.App. 14a). Moreover, the enterprise element of RICO cannot be dismissed as an ancillary detail far removed from the "'focus' of congressional concern." *Cf. Morrison*, 561 U.S. at 266. To the contrary, the "enterprise" is a central focus of RICO, as the United States correctly explained in its amicus brief. *See* U.S. Br. at 10 ("One focus of RICO is on enterprises.").

The United States further argued that, because § 1962 is focused on *both* its pattern and the enterprise elements, only *one* of them must be domestic. *See id.* at 12. That proposed rule is narrower than the one adopted by the panel, because the panel would apply RICO even if *neither* of those elements (nor the further element of injury) is domestic. But even the United States' narrower view makes little sense. *Morrison* holds that, absent some clear indication to the contrary, the "focus" of a statute is presumed to be domestic. *See* 561 U.S. at 266-69. Accordingly, if *both* the pattern and enterprise elements of § 1962 were deemed to be foci of RICO, then *both* of those elements must be domestic for RICO to apply.

C. The panel erred a third time in extending § 1964(c) to extraterritorial injuries. That provision affords a private right of action to "[a]ny person injured in his business or property by reason of a violation of section 1962." It is entirely silent as to its own geographic scope, and its "focus" is plainly the injury caused by a RICO violation, as opposed to the underlying violation separately addressed by § 1962. Moreover, even if the panel were correct that § 1962 applies extraterritorially, that would not suggest that § 1964(c) does so as well, just as the fact that § 30(a) of the Exchange Act applies extraterritorially in no way suggests that § 10(b) of that Act also does. *See Morrison*, 561 U.S. at 264-65. To the contrary, it would suggest just the opposite, by confirming that Congress, when it wanted, could speak with the requisite degree of clarity. *See Russello v. United States*, 464 U.S. 16, 23 (1983).

Finally, the panel's invocation of *Sedima* (Pet.App. 56a) provides no support for its extension of § 1964(c) to extraterritorial injuries. That case held only that § 1964(c) does not implicitly require a "racketeering injury" akin to the "antitrust injury" required for private civil antitrust claims. *See* 473 U.S. at 493-500. It has nothing whatsoever to do with any question of extraterritoriality.

* * *

In short, *Morrison* requires a clear indication that RICO—and not just the distinct crimes defined as the predicates comprising racketeering activity—applies abroad. Because there is no such indication for *any* element of a civil RICO claim, and certainly not for *all three*, the panel's ruling erroneously stretches the statute far beyond its proper scope.

## CONCLUSION

The petition for certiorari should be granted.

JULY 2015

Respectfully submitted,

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# APPENDIX

# APPENDIX A

## European Cmty. v. RJR Nabisco, Inc.

**United States Court of Appeals**
**for the Second Circuit**

August Term, 2011

Argued: February 24, 2012

Decided: April 23, 2014

Corrected: April 29, 2014

Amended: August 20, 2014

Docket No. 11-2475-cv

Before: LEVAL, SACK, HALL, Circuit Judges.

Leval, *Circuit Judge*:

This is the latest installment in litigation brought by the European Community and twenty-six of its member states[1] (collectively "Plaintiffs") against RJR Nabisco, Inc., and related entities (collectively

[1] The member state plaintiffs are: the Kingdom of Belgium, the Republic of Finland, the French Republic, the Hellenic Republic, the Federal Republic of Germany, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Portuguese Republic, the Kingdom of Spain, the Kingdom of Denmark, the Czech Republic, the Republic of Lithuania, the Republic of Slovenia, the Republic of Malta, the Republic of Hungary, the Republic of Ireland, the Republic of Estonia, the Republic of Bulgaria, the Republic of Latvia, the Republic of Poland, the Republic of Austria, the Kingdom of Sweden, the Republic of Cyprus, the Slovak Republic, and Romania.

"RJR").[2] Plaintiffs appeal from the dismissal of their Second Amended Complaint (the "Complaint") by the United States District Court for the Eastern District of New York (Garaufis, J.). The principal issues they raise are (1) whether their claims under the Racketeer Influenced and Corrupt Organizations (RICO) statute, 18 U.S.C. § 1961 *et seq.*, are impermissibly extraterritorial, and (2) whether the European Community qualifies as an organ of a foreign state for purposes of diversity jurisdiction under 28 U.S.C. §§ 1332, 1603. The Complaint alleges that RJR directed, managed, and controlled a global money-laundering scheme with organized crime groups in violation of the RICO statute, laundered money through New York-based financial institutions and repatriated the profits of the scheme to the United States, and committed various common law torts in violation of New York state law. The district court dismissed the RICO claims because it concluded that RICO has no extraterritorial application. The court dismissed the state law claims because it determined that the European Community did not qualify as an organ of a foreign state under 28 U.S.C. §§ 1332, 1603 so that its participation in the suit destroyed complete diversity, and thus deprived the court of jurisdiction over the state law claims.

We conclude that the district court erred in dismissing the federal and state law claims. We disagree with the district court's conclusion that RICO cannot apply to a foreign enterprise or to

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[2] The procedural history of this litigation was summarized by the district court. *See European Cmty. v. RJR Nabisco, Inc.*, No. 02-CV-5771, 2011 U.S. Dist. LEXIS 23538, 2011 WL 843957, at *1-2 (E.D.N.Y. Mar. 8, 2011).

extraterritorial conduct. Recognizing that there is a presumption against extraterritorial application of a U.S. statute unless Congress has clearly indicated that the statute applies extraterritorially, *see Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247 (2010), we conclude that, with respect to a number of offenses that constitute predicates for RICO liability and are alleged in this case, Congress has clearly manifested an intent that they apply extraterritorially. As to the other alleged offenses, the Complaint alleges sufficiently important domestic activity to come within RICO's coverage.

We believe that the district court also erred in ruling that the European Community's participation as a plaintiff in this lawsuit destroyed complete diversity. The European Community is an "agency or instrumentality of a foreign state" as that term is defined in 28 U.S.C. § 1603(b). It therefore qualifies as a "foreign state" for purposes of 28 U.S.C. § 1332(a)(4), and its suit against "citizens of a State or of different States" comes within the diversity jurisdiction.

## BACKGROUND

According to the Complaint, the scheme alleged to violate RICO involves a multi-step process beginning with the smuggling of illegal narcotics into Europe by Colombian and Russian criminal organizations. The drugs are sold, producing revenue in euros, which the criminal organizations "launder" by using money brokers in Europe to exchange the euros for the domestic currency of the criminal organizations' home countries. The money brokers then sell the euros to cigarette importers at a discounted rate. The cigarette importers use these euros to purchase

RJR's cigarettes from wholesalers or "cut-outs." The wholesalers then purchase the cigarettes from RJR and ship the cigarettes to the importers who purchased them. And the money brokers use the funds derived from the cigarette importers to continue the laundering cycle.

The Complaint alleges that RJR directed and controlled this money-laundering scheme, utilizing other companies to handle and sell their products. It alleges that RJR gave special handling instructions "intended to conceal the true purchaser of the cigarettes." Complaint ¶ 58. The Complaint also alleges that RJR's executives and employees would travel from the United States to Europe, the Caribbean, and Central America in order to further these money-laundering arrangements; that they shipped cigarettes through Panama in order to use Panama's secrecy laws to shield the transactions from government scrutiny; that RJR's employees would take monthly trips from the United States to Colombia through Venezuela, bribe border guards in order to enter Colombia illegally, receive payments for cigarettes, travel back to Venezuela, and wire the funds to RJR's accounts in the United States; that RJR employees traveled extensively from the United States to Europe and South America to supervise the money-laundering scheme and to entertain the criminal customers; that RJR communicated internally and with its coconspirators by means of U.S. interstate and international mail and wires; that RJR's employees filed large volumes of fraudulent documents with the U.S. Customs Service and the Bureau of Alcohol, Tobacco and Firearms to further their scheme; that RJR received the profits of its money-laundering schemes in the United States; and

that RJR acquired Brown & Williamson Tobacco "for the purpose of expanding upon their illegal cigarette sales and money-laundering activities," *id.* ¶¶ 100-103.

The Complaint asserts that in the course of executing this scheme RJR committed various predicate racketeering acts in violation of RICO, including mail fraud, wire fraud, money laundering, violations of the Travel Act, 18 U.S.C. § 1952, and providing material support to foreign terrorist organizations. In addition the Complaint asserts that RJR committed New York common law torts of fraud, public nuisance, unjust enrichment, negligence, negligent misrepresentation, conversion, and money had and received.

Defendants moved to dismiss both the RICO and state law claims. In its first decision, the district court dismissed the RICO claims on the ground that RICO has no application to activity outside the territory of the United States and cannot apply to a foreign enterprise. *European Cmty. v. RJR Nabisco, Inc. (European Cmty. I)*, No. 02-CV-5771, 2011 U.S. Dist. LEXIS 23538, 2011 WL 843957, at *4-5, *7 (E.D.N.Y. Mar. 8, 2011). The court concluded, citing *Morrison*, that the "focus" of the RICO statute is the enterprise, *see* 18 U.S.C. §§ 1961(4), 1962(a)-(c), and that the enterprise alleged in the Complaint, which consisted largely of a loose association of Colombian and Russian drug-dealing organizations and European money brokers whose activity was directed outside the United States, could not be considered domestic. Because the enterprise was foreign, the district court concluded, under *Morrison*'s presumption that United States statutes do not apply extraterritorially absent a clear indication of

congressional intent, that the Complaint failed to state an actionable violation of RICO. The court thus dismissed the RICO claims under Federal Rule of Civil Procedure 12(b)(6).

As for the state law claims alleged to come within the federal courts' diversity jurisdiction, the district court observed that the necessary *complete* diversity might be destroyed if the European Community remained a plaintiff. *European Cmty. I*, 2011 U.S. Dist. LEXIS 23538, 2011 WL 843957, at *8. The court allowed Plaintiffs' counsel time to determine whether the European Community intended to remain a party to the suit. *Id.*

Once advised that the European Community would remain a party, the court ruled that the state law claims did not come within the diversity jurisdiction of the federal courts. It held that the European Community was not a "foreign state," as used in 28 U.S.C. § 1332, with the consequence that the European Community's continued participation in the suit together with various foreign nation plaintiffs destroyed complete diversity and deprived the court of jurisdiction. *European Cmty. v. RJR Nabisco, Inc. (European Cmty. II)*, 814 F. Supp. 2d 189, 208 (E.D.N.Y. 2011). The court declined to exercise supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(c) because it had dismissed all the federal law claims. *Id.*

## DISCUSSION

Plaintiffs contend on appeal that the district court erred in concluding that the Complaint failed to allege federal law claims, and that the district court erred in finding absence of diversity jurisdiction for the state law claims. We agree with both contentions.

## I. RICO Claims

We turn first to the dismissal of the RICO claims. We review a district court's dismissal under Rule 12(b)(6) *de novo*. *Connecticut v. Duncan*, 612 F.3d 107, 112 (2d Cir. 2010).

### A. The Extraterritoriality of RICO

The district court concluded that the Complaint failed to state actionable RICO claims because the alleged enterprise was located and directed outside the United States. The court's analysis was based on the Supreme Court's ruling in *Morrison* that the presumption against extraterritorial application of U.S. statutes bars such application absent a clear manifestation of congressional intent. *European Cmty. I*, 2011 U.S. Dist. LEXIS 23538, 2011 WL 843957, at *4. The district court concluded that RICO is silent as to whether Congress intended it to apply to conduct outside the United States, and that "this silence prohibits any extraterritorial application of RICO." *Id.* The district court believed this conclusion was compelled by our holding in *Norex Petroleum Ltd. v. Access Industries, Inc.*, 631 F.3d 29, 32 (2d Cir. 2010). We disagree in several respects with the district court's analysis, including its understanding of the *Norex* precedent.

The RICO statute incorporates by reference numerous specifically identified federal criminal statutes, as well as a number of generically described state criminal offenses (known in RICO jurisprudence as "predicates"). 18 U.S.C. § 1961(1). It adds new criminal and civil consequences to the predicate offenses in certain circumstances — generally speaking, when those offenses are committed in a pattern (consisting of two or more

instances) in the context of "any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce." 18 U.S.C. § 1962; *see also id.* § 1964.

Litigants, including Plaintiffs in this case, have argued that this just-quoted provision of the statute, which makes RICO applicable to enterprises whose activities affect foreign commerce, sufficiently indicates congressional intent that RICO should apply extraterritorially. In *Norex* we rejected that argument, noting the Supreme Court's admonishment in *Morrison* that the mere fact of a statute's generic reference to "interstate or foreign commerce," identifying the source of Congress's authority to regulate, would not qualify as a manifestation of congressional intent that the statute apply extraterritorially. *Norex*, 631 F.3d at 33 (internal quotation mark omitted). The argument we rejected in *Norex* was to the effect that all claims under RICO may apply to foreign conduct because all RICO claims require proof of an enterprise whose activities affect interstate or foreign commerce. *Id.* We viewed this argument as plainly foreclosed by *Morrison*.

We rejected also a similarly ambitious argument to the effect that Congress's adoption of some RICO predicate statutes with extraterritorial reach indicated a congressional intent that RICO have extraterritorial reach for all its predicates. *See id.* In so holding, we refused to equate the extraterritoriality of certain RICO predicates with the extraterritoriality of RICO as a whole. *See id.* ("*Morrison* similarly forecloses Norex's argument that because a number of RICO's predicate acts possess an

extraterritorial reach, RICO itself possesses an extraterritorial reach.").

The district court here construed our rejection in *Norex* of arguments that RICO applies extraterritorially *in all of its applications* as a ruling that RICO can never have extraterritorial reach in *any* of its applications. *See European Cmty. I*, 2011 U.S. Dist. LEXIS 23538, 2011 WL 843957, at *4. This was a misreading of *Norex*. We now confront an argument about the extraterritorial reach of RICO that was not considered in Norex, or in other rulings called to our attention. Congress manifested an unmistakable intent that certain of the federal statutes adopted as predicates for RICO liability apply to extraterritorial conduct. This appeal requires us to consider whether and how RICO may apply extraterritorially in the context of claims predicated on such statutes.

We conclude that RICO applies extraterritorially if, and only if, liability or guilt could attach to extraterritorial conduct under the relevant RICO predicate. Thus, when a RICO claim depends on violations of a predicate statute that manifests an unmistakable congressional intent to apply extraterritorially, RICO will apply to extraterritorial conduct, too, but only to the extent that the predicate would. Conversely, when a RICO claim depends on violations of a predicate statute that does not *overcome* *Morrison*'s presumption against extraterritoriality, RICO will not apply extraterritorially either.

Our conclusion is compelled primarily by the text of RICO. Section 1961(1), which defines "racketeering activity" for purposes of RICO, incorporates by

reference various federal criminal statutes, which serve as predicates for RICO liability. Some of these statutes unambiguously and necessarily involve extraterritorial conduct. They can apply only to conduct outside the United States. As examples, § 2332 of Title 18 criminalizes killing, and attempting to kill, "a national of the United States, *while such national is outside the United States.*" 18 U.S.C. § 2332(a) (emphasis added). Section 2423(c) criminalizes "[e]ngaging in illicit sexual conduct *in foreign places.*" *Id.* § 2423(c) (emphasis added). As the conduct which violates these two statutes can occur only outside the United States, Congress unmistakably intended that they apply extraterritorially. By explicitly incorporating these statutes by reference as RICO predicate offenses, Congress also unmistakably intended RICO to apply extraterritorially when § 2332 or § 2423(c) form the basis for RICO liability. Indeed, it is hard to imagine why Congress would incorporate these statutes as RICO predicates if RICO could *never* have extraterritorial application.

Other statutes that serve as RICO predicates clearly state that they apply to both domestic and extraterritorial conduct. For example, § 1203(b), which criminalizes hostage taking, explicitly applies to conduct that "occurred outside the United States" if the offender or the hostage is a U.S. national, the offender is found in the United States, or the conduct sought to coerce the government of the United States; sections 351(i) and 1751(k) expressly provide "extraterritorial jurisdiction" for their criminalization of assassination, kidnapping, or assault of various U.S. government officials; a provision of § 1512 criminalizes extraterritorial tampering with

witnesses, victims, or informants; and § 2332b(e) expressly asserts "extraterritorial Federal jurisdiction" as to its criminalization of various "conduct transcending national boundaries" [3] including attempts, threats, or conspiracies to kill persons within the United States or damage property within the United States. Here too, Congress has not only incorporated into RICO statutes that overcome the presumption against extraterritoriality, it has also provided detailed instructions for when certain extraterritorial conduct should be actionable.

By incorporating these statutes into RICO as predicate racketeering acts, Congress has clearly communicated its intention that RICO apply to extraterritorial conduct to the extent that extraterritorial violations of those statutes serve as the basis for RICO liability. Thus, a RICO complaint predicating the defendants' liability on their having engaged in a pattern of attempting, while "outside the United States," to kill the plaintiff, "a national of the United States," as prohibited by 18 U.S.C. § 2332(b), would state an actionable violation of RICO notwithstanding the extraterritorial conduct because RICO incorporates Congress's express statement that § 2332(b) applies to whomever "*outside the United States* attempts to kill . . . a national of the United States." *Id.* (emphasis added). When, and to the extent that, a RICO charge is based on an incorporated predicate that manifests Congress's clear intention to apply extraterritorially,

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[3] "[C]onduct transcending national boundaries" is defined as "conduct occurring outside of the United States in addition to the conduct occurring in the United States." 18 U.S.C. § 2332b(g)(1).

the presumption against extraterritorial application of U.S. statutes is overcome. The district court was mistaken in interpreting our *Norex* decision as holding that RICO can never apply extraterritorially.

Applying its perception of our holding in *Norex*, the district court approached the question whether a RICO claim can apply to extraterritorial conduct by determining that the "focus" of RICO is the criminal enterprise and that any application of RICO is therefore impermissibly extraterritorial when the alleged enterprise is foreign. Because the district court viewed the enterprise alleged in the Complaint as consisting primarily of a loose association of foreign criminal organizations whose policies and activities were directed from outside the United States, it concluded that the enterprise was foreign. It accordingly held that the presumption against extraterritorial application of U.S. statutes barred application of RICO to the facts alleged in the Complaint. In our view, the court erred in that analysis for two principal reasons.

*First*, the district court's approach necessarily disregards the textual distinctions in the statutes incorporated by reference as RICO predicates. For example, the money laundering statute explicitly applies to extraterritorial conduct "if (1) the conduct is by a United States citizen . . . and (2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000." 18 U.S.C. § 1956(f). The district court's reading of RICO would preclude extraterritorial applications of RICO where they are explicitly permitted under the money laundering statute. By contrast, some RICO predicates do not mention any extraterritorial application, *see, e.g.*, 18 U.S.C. § 1511

(criminalizing the obstruction of state or local law enforcement), while others clearly apply to extraterritorial conduct, but under different circumstances than the money laundering statute, *see, e.g.*, *id.* § 1203(b) (criminalizing a subset of extraterritorial hostage-taking). The district court would presumably have RICO apply extraterritorially in the same manner when claims are brought under these different predicates, effectively erasing carefully crafted congressional distinctions.

Nothing in RICO requires or even suggests such an erasure of statutory distinctions. Rather, RICO prohibits, roughly speaking, investing in, acquiring control of, working for, or associating with an "enterprise" if the defendant's conduct involves (in a variety of potential fashions) a "pattern of racketeering activity." 18 U.S.C. §§ 1962(c), 1964(c). RICO does not qualify the geographic scope of the enterprise. [4] Nor does RICO contain any other language that would suggest its extraterritorial application differs from that specified in its various predicates.[5] Without any congressional instruction to

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[4] RICO does, however, limit its application to conduct associated with enterprises "engaged in, or the activities of which affect interstate or foreign commerce." 18 U.S.C. § 1962.

[5] We recognize, however, that unlike the other substantive provisions of *RICO*, § 1962(a) "focuses . . . on conduct different from the conduct constituting the pattern of racketeering activity." *Ideal Steel Supply Corp. v. Anza*, 652 F.3d 310, 321 (2d Cir. 2011), *cert. denied*, 132 S. Ct. 1636 (2012). Accordingly, we have held that a private plaintiff seeking damages under § 1964(c) arising from a violation of § 1962(a) must allege an "injury from the defendants' investment of racketeering income in an enterprise," rather than relying on the violation of one of the predicate acts alone. *Ouaknine v. MacFarlane*, 897 F.2d 75, 83 (2d Cir. 1990). Whether the investment constituting a

the contrary, we see no reason to adopt a construction of RICO that would permit a defendant associated with a foreign enterprise to escape liability for conduct that indisputably violates a RICO predicate, but that could impose liability on a defendant associated with a domestic enterprise for extraterritorial conduct that does not fall within the geographic scope of the relevant predicate.

Second, the district court's requirement that the defendant be, loosely speaking, associated with a domestic enterprise in order to sustain RICO liability seems to us illogical. Under that standard, if an enterprise formed in another nation sent emissaries to the United States to engage in domestic murders, kidnappings, and violations of the various RICO predicate statutes, its participants would be immune from RICO liability merely because the crimes committed in the United States were done in conjunction with a foreign enterprise. Surely the presumption against extraterritorial application of United States laws does not command giving foreigners carte blanche to violate the laws of the United States in the United States. *Cf. United States v. Parness*, 503 F.2d 430, 438-39 (2d Cir. 1974) (noting that a conclusion that RICO requires both a domestic enterprise and a domestic pattern of racketeering activity would "permit those whose actions ravage the American economy to escape

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violation of § 1962(a) must be domestic is without consequence here, because Plaintiffs have pled a domestic investment of racketeering proceeds in the form of RJR's merger in the United States with Brown & Williamson and investments in other U.S. operations. *See* Second Am. Compl. ¶¶ 100-03, 163.

prosecution simply by investing the proceeds of their ill-gotten gains in a foreign enterprise").

The district court's standard has the additional, undesirable effect of complicating the question of what conduct exposes a party to liability in the United States. Under the substantive criminal law, conduct may be sufficiently extraterritorial to provide a party with peace of mind that it is not subject to U.S. law.

Under the district court's reasoning, however, if the party acts in concert with a "domestic enterprise," it may nevertheless face stiff penalties under RICO. An important value of the presumption against extraterritoriality is predictability. An interpretation of RICO that depends on the location of the enterprise would undermine, rather than promote, that value.

We think it far more reasonable to make the extraterritorial application of RICO coextensive with the extraterritorial application of the relevant predicate statutes. This interpretation at once recognizes that "RICO is silent as to any extraterritorial application" and thus has no extraterritorial application independent of its predicate statutes. *See Norex*, 631 F.3d at 33 (quoting *N. S. Fin. Corp. v. Al-Turki*, 100 F.3d 1046, 1051 (2d Cir. 1996)). At the same time, it gives full effect to the unmistakable instructions Congress provided in the various statutes incorporated by reference into RICO. This approach has the benefit of simplifying the question of what conduct is actionable in the United States and permitting courts to consistently analyze that question regardless of whether they are presented with a RICO claim or a

claim under the relevant predicate. It also avoids incongruous results, such as insulating purely domestic conduct from liability simply because the defendant has acted in concert with a foreign enterprise.[6]

### B. The Conduct Alleged in the Complaint

The Complaint in our case alleges a pattern of racketeering activity based on predicates that include (1) money laundering, 18 U.S.C. §§ 1956-57, (2) providing material support to foreign terrorist organizations, 18 U.S.C. § 2339B, (3) mail fraud, 18 U.S.C. § 1341, (4) wire fraud, 18 U.S.C. § 1343, and (5) violations of the Travel Act, 18 U.S.C. § 1952. Applying *Morrison*'s presumption against extraterritoriality to these predicate statutes, we conclude first that the money laundering and material support of terrorism statutes both apply extraterritorially under specified circumstances, including those circumstances alleged in the Complaint. Second, we conclude that the wire fraud and money fraud statutes, as well as the Travel Act, do not overcome *Morrison*'s presumption against extraterritoriality. Nevertheless, because Plaintiffs have alleged that all elements of the wire fraud, money fraud, and Travel Act violations were completed in the United States or while crossing U.S. borders, we conclude that the Complaint states

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[6] Our rejection of the district court's conclusion — that RICO has an exclusive focus on the location of the enterprise, which alone determines whether a particular application is impermissibly extraterritorial — accords with the Ninth Circuit's ruling in *United States v. Chao Fan Xu*, 706 F.3d 965, 977 (9th Cir. 2013), although on different reasoning.

domestic RICO claims based on violations of those predicates.

### 1. Allegations of Money Laundering and Material Support of Terrorism

The money laundering predicates apply extraterritorially "if (1) the conduct is by a United States citizen . . . and (2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000." 18 U.S.C. § 1956(f). Section 1956(f) expressly states that "[t]here is extraterritorial jurisdiction over the conduct prohibited by this section." Section 1957 similarly criminalizes knowingly engaging "in a monetary transaction in criminally derived property of a value greater than $10,000 . . . derived from specified unlawful activity," *id.* § 1957(a), if the offense "*takes place outside the United States* . . . , but the defendant is a United States person," [7] *id.* § 1957(d) (emphasis added). The predicate act criminalizing material support for terrorism similarly states that it applies extraterritorially. It covers "knowingly provid[ing] material support or resources to a foreign terrorist organization," *id.* § 2339B(a)(1),

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[7] In defining the offense of money laundering, § 1956 also states that money laundering includes transporting "a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States." 18 U.S.C. § 1956(a)(2). This however is irrelevant to our inquiry. The quoted passage necessarily involves crossing the United States border. Regulation of conduct in crossing the United States borders is not regulation of extraterritorial conduct. The presumption against extraterritorial application of United States statutes does not apply to statutes that regulate entering and exiting the United States.

and adds that "[t]here is extraterritorial Federal jurisdiction over an offense under this section," *id.* § 2339B(d)(2).

The claims of the Complaint asserting RICO liability for a pattern of violations of these predicates meet the statutory requirements for extraterritorial application of RICO. The district court erred in dismissing, as impermissibly extraterritorial, the RICO claims based on these predicates.[8]

### 2. Allegations of Mail Fraud, Wire Fraud, and Travel Act Violations

Whether Congress manifested an intent that the wire fraud statute, 18 U.S.C. § 1343,[9] or the Travel Act, 18 U.S.C. § 1952, [10] applies extraterritorially

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[8] It might be argued that Congress's clear statement in the predicate statute that *it* applies extraterritorially does not constitute a congressional statement that a RICO charge predicated on that statute applies extraterritorially. This overlooks the fact that the predicate statutes are incorporated by reference into the RICO statute and are a part of it.

[9] The wire fraud statute, 18 U.S.C. § 1343, provides that:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned . . . .

[10] The Travel Act, 18 U.S.C. § 1952, provides, in pertinent part, as follows:

> (a) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to—

presents a more complicated question. The argument in favor of extraterritoriality depends on their references to foreign commerce. The wire fraud statute applies to the transmission of communications by "wire, radio, or television . . . in interstate or foreign commerce" in the execution of a scheme to defraud. *Id.* § 1343. The Travel Act applies to "travel[] in interstate or foreign commerce or use[] [of] the mail or any facility in interstate or foreign commerce" with intent to further unlawful activity. *Id.* § 1952(a). In *Morrison*, the Supreme Court observed that a "general reference to foreign commerce . . . does not defeat the presumption against extraterritoriality." *Morrison*, 130 S. Ct. at 2882. This admonition appears to bar reading these statutes literally to cover wholly foreign travel or communication. We conclude that the references to foreign commerce in these statutes, deriving from the Commerce Clause's specification of Congress's

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(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform—

(A) an act described in paragraph (1) or (3) . . . or

(B) an act described in paragraph (2) . . . shall be fined . . . , imprisoned . . . , or both.

(b) "As used in this section (i) A unlawful activity" means . . . any act . . . indictable under . . . section 1956 or 1957 [the money-laundering statute].

authority to regulate, do not indicate a congressional intent that the statutes apply extraterritorially.[11]

The mail fraud statute presents an easier case.[12] There, unlike in the Travel Act and wire fraud statute, Congress included no reference to transnational application whatsoever. *See generally* 18 U.S.C. § 1341. Accordingly, we see no basis for finding a manifestation of congressional intent that the mail fraud statute apply extraterritorially.

Applying these principles to the Complaint, we conclude that it alleges sufficient domestic conduct for the claims involving mail fraud, wire fraud, and

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[11] In *Pasquantino v. United States*, 544 U.S. 349, 371-72, (2005), the Supreme Court suggested, in dictum, that, because "the wire fraud statute punishes frauds executed in interstate or foreign commerce" it "is surely not a statute in which Congress had only domestic concerns in mind." *Id.* (internal citations and quotation marks omitted). Because that statement is dictum, and because *Morrison* explicitly rejects the reasoning on which it relies, we do not read *Pasquantino* to require us to construe the "foreign commerce" language of the wire fraud statute as rebutting the presumption against extraterritoriality.

[12] The mail fraud statute, 18 U.S.C. § 1341, provides that:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, . . . for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier . . . shall be fined under this title or imprisoned . . . .

Travel Act violations to sustain the application of RICO, notwithstanding that these predicates do not apply extraterritorially.[13]

The Complaint alleges that RJR essentially orchestrated a global money laundering scheme from the United States by sending employees and communications abroad. It claims that RJR "communicated . . . with [its] coconspirators on virtually a daily basis by means of U.S. interstate and international wires as a means of obtaining orders for cigarettes, arranging for the sale and shipment of cigarettes, and arranging for and receiving payment for the cigarettes in question." Complaint ¶ 94. The Complaint also states that RJR and its coconspirators "utilized the interstate and international mail and wires, and other means of communication, to prepare and transmit documents that intentionally misstated the purchases of the cigarettes in question so as to mislead the authorities within the United States, the European Community, and the Member States." *Id.* ¶ 95. The Complaint alleges that "the U.S. mails and wires are used by [RJR] to bill and pay for the cigarettes, to confirm billing and payment for the cigarettes, to account for the payment of the cigarettes to [RJR] and [its] subsidiaries, and to maintain an accounting of the proceeds received by [RJR] from the sale of the cigarettes, with said proceeds ultimately being

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[13] As noted above, the allegations based on the money-laundering predicate and the predicate covering material support for terrorist activities state an actionable claim notwithstanding their non-domestic elements, because Congress manifested its intention that those predicates apply extraterritorially as RICO violations.

returned to [RJR] in the United States." *Id.* ¶ *96.* The Complaint furthermore alleges:

> [T]he employees, executives, and managers of [RJR] often traveled extensively, both to supervise the schemes and also to entertain [RJR's] criminal customers. RJR executives traveled from the United States to Europe and South America to meet with, entertain, and maintain relations with RJR's criminal customers. RJR executives and managers who engaged in such travel and entertainment often received large travel and entertainment budgets from [RJR].

*Id.* ¶ 84.

Beyond these allegations that the Defendants managed their global money laundering schemes from the United States through foreign travel and communications, the Complaint also claims that the schemes themselves were directed at the United States and had substantial domestic effects. The Complaint alleges that RJR repatriated the profits of its unlawful activity into the United States through money laundering and other acts of concealment. The money laundering involved in one portion of the scheme — that comprising Russian organized crime and the Bank of New York — was largely centered in and operated from Queens, New York, where tens of millions of dollars were allegedly laundered. Defendants allegedly filed large volumes of false documents with the United States Customs Service and the Bureau of Alcohol, Tobacco and Firearms in order to deceive these agencies and permit the unlawful activity to continue. Finally, the Complaint alleges that the money laundering scheme it

describes is intertwined with organized crime and narcotics trafficking in New York City, that much of the money laundering through cigarette sales occurs in New York City, and that millions of dollars' worth of real estate have been purchased within New York in conjunction with the scheme.

We need not now decide precisely how to draw the line between domestic and extraterritorial applications of the wire fraud statute, mail fraud statute, and Travel Act, because wherever that line should be drawn, the conduct alleged here clearly states a domestic cause of action. The complaint alleges that defendants hatched schemes to defraud in the United States, and that they used the U.S. mails and wires in furtherance of those schemes and with the intent to do so. Defendants are also alleged to have traveled from and to the United States in furtherance of their schemes. In other words, plaintiffs have alleged conduct in the United States that satisfies every essential element of the mail fraud, wire fraud, and Travel Act claims. If domestic conduct satisfies every essential element to prove a violation of a United States statute that does not apply extraterritorially, that statute is violated even if some further conduct contributing to the violation occurred outside the United States.[14]

We note that, as we are reviewing a dismissal based solely on the contents of the Complaint, our conclusion is based entirely on the Complaint, which we find sufficient to state an actionable claim. Plaintiffs' ability to prevail will depend, in part, on

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[14] We need not decide whether domestic conduct satisfying fewer than all of the statute's essential elements could constitute a violation of such a statute.

their ability to present evidence showing that the alleged statutory violation was domestic. Should the pattern of conduct of certain Defendants or certain schemes prove to be extraterritorial, the district court may need to narrow the scope of this action accordingly, through either motions for (partial) summary judgment or through carefully tailored jury instructions.

## II. Diversity Jurisdiction and State Law Claims

Next, we turn to the district court's dismissal of Plaintiffs' state law claims. We review a district court's legal conclusions dismissing state law claims for lack of subject matter jurisdiction de novo. *Capital Ventures Int'l v. Republic of Argentina*, 552 F.3d 289, 293 (2d Cir. 2009).

Federal courts are powerless to adjudicate a suit unless they have subject matter jurisdiction over the action. The district court determined that it lacked subject matter jurisdiction over Plaintiffs' state law claims under the diversity jurisdiction statute, 28 U.S.C. § 1332. Section 1332 requires complete diversity between opposing parties. *See, e.g.*, *Hallingby v. Hallingby*, 574 F.3d 51, 56 (2d Cir. 2009); *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267, 267, 2 L. Ed. 435 (1806). If the European Community is not diverse from RJR, its continued participation in this lawsuit would destroy complete diversity and deprive the federal court of jurisdiction.[15]

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[15] Since this lawsuit was filed, the European Community has been incorporated into the European Union. Despite this change, the European Community remains the relevant entity, as the court's subject matter jurisdiction and a party's instrumentality status for purposes of § 1603 are both determined at the time when the complaint is filed. *See*

Section 1332(a)(4) grants the federal courts jurisdiction over suits where the amount in controversy exceeds $75,000 and the suit is between "a foreign state . . . as plaintiff and citizens of a State." 28 U.S.C. § 1332(a)(4). A "foreign state" is defined for purposes of § 1332(a)(4) by § 1603, which is part of the Foreign Sovereign Immunities Act ("FSIA"). This latter section provides:

> (a) A "foreign state" . . . includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).
>
> (b) An "agency or instrumentality of a foreign state" means any entity—
>
> (1) which is a separate legal person, corporate or otherwise, and
>
> (2) which is an organ of a foreign state or political subdivision thereof . . .
>
> and
>
> (3) which is neither a citizen of a State of the United States . . . nor created under the laws of any third country.

*Id.* § 1603.

The European Community is therefore a "foreign state" for purposes of § 1332(a)(4) if it is an "agency or instrumentality of a foreign state." Whether it is an agency or instrumentality of a foreign state, in turn, depends on whether it conforms to the definition in subsection (b). There is no doubt that

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*Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 830 (1989) (subject matter jurisdiction); *Dole Food Co. v. Patrickson*, 538 U.S. 468, 478 (2003) (instrumentality status).

the European Community satisfies the first and third elements of the definition of "agency or instrumentality" provided in § 1603(b).[16] It is clear also that the European Community is not a political subdivision of a foreign state. The question is whether the European Community is "an organ of a foreign state." *Id.*

For the reasons discussed below, we conclude that the European Community is an organ of a foreign state, and thus an agency or instrumentality of a foreign state. As a result, the continued participation of the European Community in this suit does not destroy complete diversity.

**A. Definitions**

The FSIA does not include a definition of the term "organ." A number of dictionaries we have consulted include definitions of "organ" that are altogether compatible with the European Community in its relationship to the states that formed it. *See* Organ Definition, Oxford English Dictionary, http://www.oed.com/view/Entry/132421 (last visited July 10, 2013) ("A means of action or operation, an instrument; (now) esp. a person, body of people, or thing by which some purpose is carried out or some function is performed."); American Heritage

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[16] The European Community has independent legal status. Consolidated Version of the Treaty Establishing the European Community, art. 281, Oct. 11, 1997, O.J. (C340) 293 (1997) [hereinafter EC Treaty] ("The Community shall have legal personality."). The European Community was not created under the laws of a non-member state. *See* EC Treaty, art. 313; *see also In re Air Crash Disaster Near Roselawn, Ind.*, 96 F.3d 932, 938 (7th Cir. 1996) ("The FSIA requires that the [entity] not be created under the laws of a third country, that is, a nation not a member of the multinational joint venture.").

Dictionary 875 (2d College ed. 1982) ("An organization that performs certain specified functions: The FBI is an organ of the Justice Department."); Merriam-Webster's Third New International Dictionary of the English Language 1589 (1976) ("an instrumentality exercising some function or accomplishing some end"). RJR in rebuttal points to definitions that characterize an organ as subordinate to a larger entity, arguing that this is not the case with the European Community's relationship to its member nations. But the fact that the word is sometimes used to refer to a smaller part of a larger whole does not mean that the word can serve only in that fashion. The European Community was formed by its member nations to serve on their collective behalf as a body exercising governmental functions over their collective territories. We see no reason why it is not properly described as an organ of each nation.

In *Filler v. Hanvit Bank*, 378 F.3d 213, 217 (2d Cir. 2004), this court set forth five factors to guide a court in determining whether a party is an "organ" under the FSIA. The factors are:

> (1) whether the foreign state created the entity for a national purpose; (2) whether the foreign state actively supervises the entity; (3) whether the foreign state requires the hiring of public employees and pays their salaries; (4) whether the entity holds exclusive rights to some right in the [foreign] country; and (5) how the entity is treated under foreign state law.

*Id.* (quoting *Kelly v. Syria Shell Petroleum Dev. B.V.*, 213 F.3d 841, 846-47 (5th Cir. 2000)) (alteration in original). We have stated that these factors invite a

balancing process, and that an entity can be an organ even if not all of the factors are satisfied. *See In re Terrorist Attacks on Sept. 11, 2001*, 538 F.3d 71, 85 (2d Cir. 2008), *abrogated on other grounds by Samantar v. Yousuf*, 560 U.S. 305 (2010). The European Community satisfies four of these factors and, very likely, also the fifth: it was created by the European nations for national purposes; it is supervised by the foreign countries; it has public employees whose salaries are paid, at least indirectly, by the member nations, which continue to bear collectively the expenses of operation; it holds exclusive rights in the foreign countries; and the foreign countries treat it as a government entity under their laws. We discuss each of these factors briefly below.

**1. National Purpose**

It seems beyond doubt that the member states that founded the European Community did so for a "national purpose." *Filler*, 378 F.3d at 217. Their purpose was to establish governmental control on a collective basis over various national functions previously performed by each of the member states on an individual basis, such as by establishing a common market and a monetary union, and by coordinating economic activities throughout the community. EC Treaty, arts. 1-4. The management of a common currency and the maintenance of economic stability are quintessential national purposes.

**2. Supervision**

We have said that a foreign state actively supervises an organ when it appoints the organ's key officials and regulates some of the activities the

organ can undertake. *See, e.g., Peninsula Asset Mgmt. (Cayman) Ltd. v. Hankook Tire Co.*, 476 F.3d 140, 143 (2d Cir. 2007). Member states exercise supervisory responsibility over the European Community by appointing representatives to serve on the Council of Ministers, which is the European Community's "primary policy-making and legislative body." *See* Stephen Breyer, *Changing Relationships Among European Constitutional Courts*, 21 Cardozo L. Rev. 1045, 1046 (2000). Each member of the Council is the appointed representative of one member state (although the individual representative will change depending on the subject matter to be discussed by the Council). *Id.* Additionally, each member state selects commissioners to serve on the European Commission, which administers the Community's various departments. *Id.* at 1046-47.

It is true that these entities are just two of the five basic institutions of the European Community. However, this factor does not require the foreign state to micro-manage every aspect of the organ's activities. The Council of Ministers is the European Community's primary policy-making and legislative body. Therefore, the member states' supervision of this entity enables the member states to supervise the most significant policy decisions made by the European Community.

### 3. Public Employees

The third factor asks "whether the foreign state requires the hiring of public employees and pays their salaries." *Filler*, 378 F.3d at 217. The EC Treaty, enacted by the member states, requires the creation of particular positions, which are to be filled by public officials. *See European Cmty. II*, 814 F.

Supp. 2d at 205. Service as a European Community official satisfies the European Court of Justice's definition of "public service" because such officials exercise "powers conferred by public law and duties designed to safeguard the general interests of the state or of other public authorities." *Id.* (quoting Case 149/79, *Comm'n of the European Cmtys. v. Kingdom of Belgium*, 1980 E.C.R. 3881, ¶10). The member states indirectly pay the salaries of the public employees. In 2000, for example, they contributed 78.4% of the European Community's budget, 5.5% of which goes to administrative expenses, which include salaries and pensions. See European Commission, EU Budget 2008 Financial Report, 82, 88 (2009).

RJR argues that the European Community does not satisfy this factor because its employees are not public employees *of the member states*. *See, e.g.*, *Patrickson v. Dole Food Co.*, 251 F.3d 795, 808 (9th Cir. 2001), *aff'd by* 538 U.S. 468 (2003). This fact seems to us of small importance at best. Given that the European Community exercises governmental functions delegated to it by the member states, and does so through public employees whose pay is financed largely by the member states, it seems to make little or no difference for the question whether the European Community serves as an organ of its member states that its employees are not employees directly of the member states. Nevertheless, as noted above, our precedent makes clear that the five *Filler* factors are merely issues to be considered in the decision, and there is no requirement that all five be satisfied to support the conclusion that an entity is an organ of a foreign state. We would reach the same conclusion even if precedent compelled us to decide

that the European Community fails to satisfy this factor. *See Peninsula Asset Mgmt.*, 476 F.3d at 143 (concluding the entity was an "organ" despite the fact that it failed to satisfy the public employee factor).

### 4. Exclusive Rights

Fourth, we consider "whether the entity holds exclusive rights to some right in the foreign country." *Filler*, 378 F.3d at 217 (alteration omitted). This factor has been given a broad meaning. *See, e.g.*, *Terrorist Attacks*, 538 F.3d at 86 (an entity satisfied this factor when it held "the 'sole authority' to collect and distribute charity to Bosnia"); *Peninsula Asset Mgmt.*, 476 F.3d at 143 (entity "has the exclusive right to receive monthly business reports from the solvent financial institutions it oversees"). The European Community holds the exclusive right to exercise a number of significant governmental powers, which include the right to "authori[z]e the issue of banknotes within the Community" and "to conclude the Multilateral Agreements on Trade in Goods." *European Cmty.*, 814 F. Supp. 2d at 206-07.

### 5. Foreign State Law

Finally, the fifth factor asks "how the entity is treated under foreign state law." *Filler*, 378 F.3d at 217. In *Peninsula Asset Management*, this factor was satisfied when the "Korean government informed the State Department and the district court that it treats [the entity] as a government entity." *Peninsula Asset Mgmt.*, 476 F.3d at 143. Neither party cites to European law that clearly addresses this question. The member states that are parties to this suit have identified the European Community as an organ. Plaintiffs informed the district court in their briefing that they consider the European Community to be a

governmental entity, and the United States Department of State has advised that it accepts this representation. *See* Brief for the United States as Amicus Curiae at 29. Therefore, in a manner similar to the one employed in *Peninsula Asset Management*, the European Community appears to satisfy this factor. Furthermore, the fact that the member states have ceded portions of their governmental authority to the European Community to be exercised by it in their stead and on their collective behalf seems to confirm its status as an organ and agency of the member states.

RJR argues that none of the member states has treated the European Community as its "organ," rather than as a supranational body of the member states. This argument, however, depends on the proposition that a governmental entity created by a collectivity of governments to exercise certain powers in their stead and on their behalf cannot be at once a supranational entity and an organ or agency of the actors that created it. It appears to us that both descriptions are accurate, and the fact that the European Community functions as a supranational governmental entity does not negate its also being an organ and agency of its member states, which continue to exist as sovereign nations, notwithstanding having delegated some of their governmental powers to the supranational agency they created.

### B. Multi-National Entities

RJR argues that the text and legislative history of the FSIA, along with the common law at the time of the FSIA's enactment, demonstrate that an "organ" of

a foreign state cannot include an international organization created by multiple states. We disagree.

First, we turn to the text of § 1603. The fact that § 1603(b)(2) uses the term "organ of a foreign state" in the singular does not necessarily negate application to the European Community, which serves numerous foreign states. 28 U.S.C. § 1603(b)(2) (emphasis added). There is no logic to the proposition that an entity that serves as an organ of one foreign state cannot also serve as the organ of another. The Dictionary Act furthermore states that "[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise[,] words importing the singular include and apply to several persons, parties, or things." 1 U.S.C. § 1. Context "means the text of the Act of Congress surrounding the word at issue, or the texts of other related congressional Acts." *Rowland v. Cal. Men's Colony*, 506 U.S. 194, 199 (1993). The context here gives no indication that the phrase "a foreign state" must be interpreted to exclude an organ that serves as an agency of several states. Our interpretation finds support in the law of other circuits dealing with the pooling of shares to determine the status of commercial entities. *See In re Air Crash Disaster Near Roselawn, Ind.*, 96 F.3d 932, 938-39 (7th Cir. 1996) (holding that an entity created by multiple governments is an "agency or instrumentality" under the FSIA); *Mangattu v. M/V IBN Hayyan*, 35 F.3d 205, 208 (5th Cir. 1994) (same); *Linton v. Airbus Indus.*, 30 F.3d 592, 598 n.29 (5th Cir. 1994) (collecting cases). In these "share pooling" cases, courts have repeatedly held that corporations owned by several foreign states are covered by the FSIA, even though the statute uses the singular.

RJR argues that because some dictionaries define "organ" as a smaller unit of a larger entity, an "organ" cannot be a larger international organization created by multiple foreign states. *See* Merriam-Webster's Collegiate Dictionary 819 (10th ed. 1997) (giving as a definition of "organ": "a subordinate group or organization that performs specialized functions"). This argument is not persuasive for at least three reasons: First, while some dictionary definitions treat an organ as smaller than, or subordinate to, the entity for which it functions as an organ, other dictionary definitions do not include any specification that the entity serving as an organ must be smaller or subordinate, but focus rather on the organ's performance of a service. See definitions provided *supra*. Second, even if we accept an implicit connotation of subordinate status, that is not necessarily inconsistent with treating the European Community as an organ of the nations that created it. While the member states ceded to the European Community primacy as to certain specified governmental functions, they retained the vast majority of governmental control. Each member state continued to exist as a sovereign state, notwithstanding having voluntarily ceded portions of its authority to the European Community, and, through the Treaty of Lisbon, the member states dissolved the European Community and incorporated it into the European Union. Thus, in certain senses, the European Community exercised its powers by the sufferance of the member states, and was both subordinate to and smaller than the aggregate of the nation states that created it. Third, it is not as if the European Community's access to the federal courts under § 1332 turns exclusively on the meaning of

"organ." The definition of the types of entities eligible to claim diversity jurisdiction as a plaintiff under the "foreign state" rubric of 28 U.S.C. § 1332(a)(4) is considerably more complex and multifaceted. As noted, a "foreign state" includes "an agency or instrumentality of a foreign state," *id.* § 1603(a), which in turn is defined to mean, in relevant part, "any entity which is a separate legal person . . . and which is an organ of a foreign state." *Id.* § 1603(b). The type of entity that qualifies for federal jurisdiction thus partakes not only of "organ" but also of "agency," "instrumentality," and "separate legal person[hood]." While the ultimate question is whether the European Community qualifies as an "organ," the meaning of "organ" under this statute is influenced by the definitional chain, which requires a construction that differs from what "organ" would ordinarily mean by itself. Cf. *Babbitt v. Sweet Home Chapter of Comms. for a Great Or.*, 515 U.S. 687, 704-05 (1995) (construing the word "harm" in light of the meaning of the word it defined). To qualify as an "agency or instrumentality," for example, the "organ" must be a "separate legal person," which requirement by itself takes "organ" out of certain conventional meanings of the term.

RJR advances a number of additional strained arguments to the effect that an international organization should not be considered an agency or instrumentality, none of which are convincing.[17]

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[17] RJR also cites, in support of its position, the enactment of separate statutes, 22 U.S.C. §§ 288-288*l*, which provide certain immunities to certain international organizations, but which do not grant co-extensive immunities to all international organizations as the FSIA provides to foreign states. RJR

* * *

We are satisfied that the European Community meets at least four, and possibly all five of the Filler factors, and therefore qualifies as an organ and agency of a foreign state under § 1332(a)(4). The suit accordingly comes within the diversity jurisdiction, as specified in 28 U.S.C. § 1332.[18]

## CONCLUSION

The judgment of the district court dismissing the action is VACATED, and the case REMANDED for further proceedings.

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argues that this separate statutory framework for analyzing the immunities of international organizations suggests that Congress did not contemplate that such organizations would fall within the definition of "foreign state" under the FSIA. It suffices to say that Congress's belief that certain international organizations were not organs of foreign states under the FSIA cannot be read to imply that Congress believed none could be organs of foreign states. Nothing in the statutes cited by RJR suggests that international organizations that do qualify as organs of a foreign state cannot, by virtue of their status as international organizations, be treated as foreign states under the FSIA.

[18] Plaintiffs also contend that the district court erred by dismissing their federal common law nuisance claim without discussion. Although the Complaint does not specify whether Plaintiffs' public nuisance claim was brought under federal or state law, it appears that Plaintiffs stipulated that all of their common law claims were to be decided under New York law. Therefore, we have considered the dismissal of Plaintiffs' public nuisance claim along with Plaintiffs' other state law claims.

## APPENDIX B

***European Cmty. v. RJR Nabisco, Inc.***

**United States District Court**
**for the Eastern District of New York**

March 7, 2011, Decided;

March 8, 2011, Filed

02-CV-5771 (NGG) (VVP)

### MEMORANDUM & ORDER

NICHOLAS G. GARAUFIS, United States District Judge.

The European Community and twenty-six European countries (the "Member States"), captioned above (collectively, "Plaintiffs"), bring this action against various corporate entities of American cigarette manufacturer R.J. Reynolds (collectively, "Defendants") for five violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962, and for nine common-law torts in relation to Defendants' sales practices respecting their cigarettes. (2d Am. Compl. (Docket Entry # 73).) Defendants move to dismiss Plaintiffs' Second Amended Complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (Defs.' Mot. (Docket Entry # 83).) As set forth below, the court grants Defendants' motion to dismiss in part and reserves decision on the remainder of Defendants' motion

pending a response from Plaintiffs' counsel as to whether the European Community will proceed in this action.

## I. BACKGROUND

### A. Procedural History

Defendants' motion is the latest chapter in what is now a decade of litigation between the parties. On November 3, 2000, the European Community filed a complaint against all of the current Defendants, and others, generally alleging that Defendants engaged in a practice of smuggling and money laundering in relation to their cigarettes, in violation of RICO. (Compl., *European Community v. RJR Nabisco, Inc.*, No. 00-cv-6617 (NGG) (VVP) (E.D.N.Y. Nov. 3, 2000) (Docket Entry # 110).) On July 16, 2001, the court dismissed the European Community's RICO claims and then dismissed the remainder of the action for lack of subject matter jurisdiction. *European Community v. RJR Nabisco, Inc.* (*EC I*), 150 F. Supp. 2d 456, 500-502 (E.D.N.Y. 2001).

On August 6, 2001, the European Community filed another complaint in this court, adding ten European countries as plaintiffs, [1] against substantially the same defendants. (Compl., *European Community v. RJR Nabisco, Inc.*, No. 01-cv-5188 (NGG) (VVP) (Aug. 6, 2001) (Docket Entry # 1).) On the defendants' motion to dismiss, the court again dismissed the plaintiffs' complaint. *European Community v. Japan*

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[1] Those countries included the Kingdom of Belgium, the Republic of Finland, the French Republic, the Hellenic Republic, the Federal Republic of Germany, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Portuguese Republic, and the Kingdom of Spain, all members of the European Community.

*Tobacco, Inc.* (*EC II*), 186 F. Supp. 2d 231, 233 (E.D.N.Y. 2002).

Plaintiffs took a two-pronged approach to that decision: they filed yet another complaint—the Original Complaint in this action (Compl. (Docket Entry # 1))—and appealed the court's decision in *EC II* to the United States Court of Appeals for the Second Circuit (Pls.' Notice of Appeal, *European Community v. RJR Nabisco, Inc.*, No. 01-cv-5188 (NGG) (VVP) (E.D.N.Y. Mar. 25, 2002) (Docket Entry # 84)). On appeal, the Second Circuit affirmed this court's decision in *EC II* against all of the defendants except Japan Tobacco, Inc., and its subsidiaries and affiliates. *European Community v. RJR Nabisco, Inc.* (*EC III*), 355 F.3d 123, 127 (2d Cir. 2004).[2]

Following *EC III*, the parties stipulated to Plaintiffs filing an amended complaint in the instant action while the court stayed the proceedings so Plaintiffs could petition for a writ of certiorari to the Supreme Court of the United States. (*See* Docket Entry ## 41, 47.) On May 2, 2005, the Supreme Court granted certiorari and summarily vacated and remanded *EC III* in light of the Court's ruling in *Pasquantino v. United States*, 544 U.S. 349 (2005), decided the same term. *European Community v. RJR Nabisco, Inc.*, 544 U.S. 1012, 1012 (2005). On remand, the Second Circuit concluded that *Pasquantino* did not change its analysis in *EC III*, and reinstated its decision. *European Community v.*

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[2] The Second Circuit vacated this court's decision in *EC II* with respect to Japan Tobacco, Inc. because, at the time of this court's decision in *EC II*, "Japan Tobacco had not yet been served in the action and had not appeared or joined the motion to dismiss." *EC III*, 355 F.3d at 139.

*RJR Nabisco, Inc.* (*EC IV*), 424 F.3d 175, 182-83 (2d Cir. 2005). Plaintiffs again petitioned the Supreme Court for a writ of certiorari, but the Court denied the petition on January 9, 2006. *European Community v. RJR Nabisco, Inc.*, 546 U.S. 1092 (2006).

From 2006 to 2007, Plaintiffs engaged in settlement discussions with Japan Tobacco. (*See* Mem. & Order (Docket Entry # 72) at 2.) No parties had any contact with the court until March 2009, when Plaintiffs moved to file a Second Amended Complaint—their fifth in nine years—to add new defendants, new European nation-plaintiffs, and new factual allegations that had apparently developed since their last filing. (*See id.*) The court granted Plaintiffs' motion, and Plaintiffs filed their Second Amended Complaint. (2d Am. Compl.) On April 30, 2010, Defendants filed their fully briefed motion to dismiss the Second Amended Complaint. (Defs.' Mot. (Docket Entry # 83); Defs.' Mem. (Docket Entry # 84); Pls.' Opp'n (Docket Entry # 87); Defs.' Reply (Docket Entry # 88).)

Since Defendants have filed their motion, the Supreme Court decided *Morrison v. National Australia Bank Ltd.*, 130 S. Ct. 2869 (2010), which prohibits the extraterritorial application of federal statutes that are silent on or unclear concerning extraterritoriality. Applying Morrison, the Second Circuit concluded that RICO is silent on extraterritorial application. *Norex Petroleum Ltd. v. Access Indus., Inc.* (*Norex II*), 622 F.3d 148, 2010 WL 3749281, at *2 (2d Cir. 2010), *amended by* 2010 WL 4968961 (2d Cir. 2010). The court then ordered the parties to address the application of *Morrison* and *Norex II* to Plaintiffs' RICO claims at oral argument.

(Docket Entry, Oct. 21, 2010.) After hearing oral argument from the parties, the court ordered supplemental briefing on the issue. (Docket Entry, Oct. 26, 2010; *see also* Defs.' Suppl. Mem. (Docket Entry # 95); Pls.' Suppl. Opp'n (Docket Entry # 97); Defs.' Suppl. Reply (Docket Entry # 99).) The court now considers Defendants' motion and the parties' supplemental briefs.

**B. Plaintiffs' Second Amended Complaint**

Plaintiffs' Second Amended Complaint—a structureless morass of allegations, devoid of any sequential description of events—generally asserts that Defendants engaged in a global money-laundering scheme. (2d Am. Compl. ¶¶ 1-5.) Plaintiffs allege a representative scheme as follows: First, Colombian and Russian criminal organizations smuggle cocaine and heroin, respectively, into Europe, where they generate large cash proceeds, in Euros, from drug sales. (*Id.* ¶¶ 31-32.) Those criminal organizations then trade those Euros, located in Europe, for local currency in the criminal organizations' home countries, through a European black market "money broker." (*Id.* ¶¶ 37-38.) Next, illicit cigarette importers purchase those Euros from the money broker at a discount to the prevailing exchange rate. (*Id.* ¶ 39.) Those importers then use the Euros to purchase Defendants' cigarettes from U.S. and European wholesalers. (*Id.*) The wholesalers then purchase cigarettes from Defendants, and ship the cigarettes to the importers. (*Id.*)

As for *Defendants'* involvement in this scheme—beyond their selling of cigarettes to U.S. and European wholesalers—Plaintiffs allege that

Defendants "utilized certain companies" to handle the illicit transactions, who "maintained lists of 'direct customers of RJR' which included special handling instructions for shipments for [customers that] Defendants knew were involved in criminal activities." (*Id.* ¶ 58.) Plaintiffs further allege that Defendants traveled around the world "for the purpose of meeting and negotiating business agreements with individuals who [Defendants] knew, or should have known, were involved in the laundering of narcotics proceeds." (*Id.* ¶ 63; *see also Id.* ¶¶ 84, 115.)

Plaintiffs also allege some variations on this representative scheme. In some instances, the illicit cigarette importers are the same Colombian and Russian criminal organizations engaged in drug trafficking. (*Id.* ¶ 39.) In others, the money brokers themselves purchase cigarettes from wholesalers. (*Id.* ¶ 59.) In another, Defendants initially ship their cigarettes into Panama to "use the secrecy laws of the Republic of Panama" to shield the transactions. (*Id.* ¶¶ 66, 104-108.) Plaintiffs also allege that Defendants purchased former British tobacco manufacturer, Brown & Williamson, for the purpose of expanding these schemes in Europe. (*Id.* ¶¶ 100-103.)

In one scheme, Defendants' employees allegedly traveled to Venezuela, snuck across the border to Colombia, sold cigarettes to Colombian criminal organizations for cash, snuck back across the Venezuelan border, and wired the cash proceeds to Defendants from Venezuela. (*Id.* ¶ 72.) Sometimes these employees would receive payments in Brady

Bonds,[3] rather than cash, which they would sell for U.S. dollars back in Venezuela. (*Id.* ¶ 74.)

In another scheme—completely devoid of any connection to Europe—a non-party corporation with the same address as one of the Defendants sold cigarettes in Iraq, via territories controlled by the Kurdistan Workers' Party, a designated terrorist organization. (*Id.* ¶¶ 77, 80.) Plaintiffs argue that this somehow harmed the European Community's interests. (*Id.*)

Lastly, Plaintiffs assert that, "[o]n many occasions over the past decade," Defendants lied to them regarding the exportation of their cigarettes. (*Id.* ¶¶ 85-87.) First, Plaintiffs allege that Defendants lied to them about markings on their cigarettes that supposedly enabled Defendants to identify illicit cigarette purchasers. (*Id.* ¶ 86.) And second, Plaintiffs complain that Defendants undervalued the cost of their cigarettes when importing them into Europe. (*Id.* ¶¶ 87-89.)

Plaintiffs finish their Second Amended Complaint by listing seven "interests" the United States and this district have in Defendants' alleged conduct (*id.* ¶¶ 133(a)-(g)); thirty-six "injuries" suffered by Plaintiffs (*Id.* ¶¶ 146(a)-(jj)); twenty-nine requests for relief (*id.* ¶¶ 153(a)-(o); 155(a)-(n)); and fourteen legal claims against Defendants (*Id.* ¶¶ 157-257).

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[3] Brady Bonds are tradeable securities issued by the United States and "backed by United States Treasury zero coupon bonds, which act as collateral or as a guarantee and give investors greater security." Comment, Jessica W. Miller, *Solving the Latin America Sovereign Debt Crisis*, 22 U. Pa. J. Int'l Econ. L. 677, 687 (2001)

## II. DISCUSSION

### A. Extraterritoriality of Plaintiffs' RICO Claims

Defendants argue that, following *Morrison* and *Norex* II, Plaintiffs' RICO claims are impermissibly extraterritorial, and must be dismissed under Federal Rule of Civil Procedure 12(b)(6). (Defs.' Suppl. Mem. at 1-9.) Rule 12(b)(6) allows for dismissal of a claim for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). In evaluating a motion to dismiss under Rule 12(b)(6), a court must "accept as true all factual statements alleged in the complaint and draw all reasonable inferences in favor of the non-moving party." *Vietnam Ass'n for Victims of Agent Orange v. Dow Chem. Co.*, 517 F.3d 104, 115 (2d Cir. 2008) (citation omitted). If the claim at issue does not state a "legally cognizable right of action," the court must dismiss that claim. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). As discussed below, the court agrees that Plaintiffs' claims are impermissibly extraterritorial and must be dismissed under Rule 12(b)(6).

#### *1. Extraterritoriality of RICO*

In measuring the territorial reach of a federal statute, *Morrison* commands that "when a statute gives no clear indication of an extraterritorial application, it has none." 130 S. Ct. at 2878. In *Norex II*, Second Circuit concluded that its prior precedent "holds that RICO is silent as to any extraterritorial application." 2010 WL 4968691, at *3 (citing *N. S. Fin. Corp. v. Al-Turki*, 100 F.3d 1046, 1051 (2d Cir. 1996)). Therefore, in light of *Morrison*,

this silence prohibits any extraterritorial application of RICO. *Id.* at *3.

*2. The Focus of RICO*

In determining whether a claim seeks an extraterritorial application of a federal statute, the court must look to the "focus" of that statute. *See Morrison*, 130 S. Ct. at 2883-84. This focus is not necessarily the "bad act," or the *actus reus*, prohibited by the statute. *Id.* at 2881. Rather, it is "the object[] of the statute's solicitude," the activities "the statute seeks to regulate [and] parties or prospective parties to those [activities] that the statute seeks protect." *Id.* (internal citations and quotation marks omitted).

In *Morrison*, for example, the Court engaged in a thorough analysis of § 10(b) of the Securities Exchange Act to determine its "focus." *Id.* at 2884. Section 10(b) makes it illegal for "any person . . . to use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered . . . any manipulative or deceptive device or contrivance." *See id.* at 2881 (quoting 15 U.S.C. § 78j(b)). Looking at the operative section of the statute, the Supreme Court noted that § 10(b) focused "not upon the place where the deception originated, but upon purchases and sales of securities." *Id.* The Court concluded that "[t]hose purchase-and-sale transactions are the objects of the statute's solicitude. It is those transactions that the statute seeks to regulate; it is parties or prospective parties to those transactions that the statute seeks protect." *Id.* (internal citations and quotation marks omitted). Accordingly, the Court determined that § 10(b) was limited in scope "to purchases and sales of securities

*in the United States.*" *Id.* (emphasis added). Because the sales of securities at issue in *Morrison* occurred outside the United States, the Court rejected the plaintiffs' argument that it merely sought enforcement of a domestic claim even though the deceptive conduct occurred in Florida. *Id.* at 2885-85.

While the Second Circuit has not addressed the "focus" of RICO, the statutory analysis in *Morrison* proves illuminating. The RICO statute contains four operative subsections. Subsection (a) makes it "unlawful for any person who has received any income derived . . . from a pattern of racketeering activity . . . to use or invest . . . any part of such income [in] any enterprise." 18 U.S.C. § 1962(a). Subsection (b) prohibits "any person through a pattern of racketeering activity . . . to acquire or maintain . . . any interest in or control of any enterprise." *Id.* 1962(b). Subsection (c) forbids "any person employed by or associated with any enterprise . . . to conduct or participate . . . in the conduct of such enterprise's affairs through a pattern of racketeering activity." *Id.* § 1962(c). Lastly, subsection (d) outlaws conspiring "to violate any of the provisions of subsection (a), (b), or (c) of this section." *Id.* § 1962(d).

Each of the three primary subsections—(a), (b), and (c)—contains three elements: the "person," the "enterprise," and the "pattern of racketeering activity." *See St. Germain v. Howard*, 556 F.3d 261, 263 (5th Cir. 2009) ("Claims under RICO, 18 U.S.C. § 1962, have three common elements: (1) a person who engages in (2) a pattern of racketeering activity, (3) connected to the acquisition, establishment, conduct, or control of an enterprise.") (citation omitted). With respect to these elements, the statute

does not punish the predicate acts of racketeering activity—indeed, each predicate act is, itself, a separate crime—but only racketeering activity in connection with an "enterprise." *See United States v. Neapolitan*, 791 F.2d 489, 500 (7th Cir. 1986) ("The central role of the concept of enterprise under RICO cannot be overstated."); Randy D. Gordon, *Crimes That Count Twice: A Reexamination of RICO's Nexus Requirements Under 18 U.S.C. §§ 1962(c) and 1964(c)*, 32 Vt. L. Rev. 171, 172 (2007) ("[E]ven a pervasive pattern of racketeering acts (also referred to as 'predicate' acts in cases and commentary) will not sustain a RICO claim if it is not tied to a RICO 'enterprise.'"); *cf. Morrison*, 130 S. Ct. at 2884 ("Section 10(b) does not punish deceptive conduct, but only deceptive conduct 'in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered.'" (quoting 15 U.S.C. § 78j(b))). RICO, therefore, seeks to regulate "enterprises" by protecting them from being victimized by or conducted through racketeering activity. *See Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 164 (2001) (concluding that the purpose of RICO is "both protect[ing] a legitimate 'enterprise' from those who would use unlawful acts to victimize it [and] protect[ing] the public from those who would unlawfully use an 'enterprise' (whether legitimate or illegitimate) as a 'vehicle' through which 'unlawful activity is committed'" (citing *United States v. Turkette*, 452 U.S. 576, 591 (1981) and *Nat'l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 259 (1994))). Even the name of the statute suggests that it places its focus on the "enterprise"—RICO is, after all, the Racketeer Influenced and Corrupt *Organizations* Act.

*See* 18 U.S.C. § 1961, Short Title (emphasis added). Accordingly, it is the "enterprise" that is the object of the statute's solicitude, and the "focus" of the statute. *See Morrison*, 130 S. Ct. at 2884.

*3. Location of a RICO Enterprise*

Because the "focus" of RICO is the "enterprise," a RICO "enterprise" must be a "domestic enterprise." *Cf. id.* at 2884 ("And it is in our view only transactions in securities listed on domestic exchanges, and domestic transactions in other securities, to which § 10(b) applies."). While there are no cases suggesting how a court may determine the geographic location of a RICO enterprise, other cases have analogously discussed how to determine the geographic location of a corporation. In *Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010), for example, the Supreme Court adopted the "nerve center test" as the vehicle of choice in determining a corporation's "principal place of business." In *Hertz*, the Supreme Court interpreted the diversity jurisdiction statute to "conclude that [a corporation's] 'principal place of business' is best read as referring to the place where a corporation's officers direct, control, and coordinate the corporation's activities. It is the place that Courts of Appeals have called the corporation's 'nerve center.'" 130 S. Ct. at 1192 (citing *Scot Typewriter Co. v. Underwood Corp.*, 170 F. Supp. 862, 865 (S.D.N.Y. 1959)).

The nerve center test "identif[ies] the place where overall corporate policy originates or the nerve center from which it radiates out to its constituent parts and from which its officers direct, control and coordinate all activities without regard to locale, in the furtherance of the corporate objectives." *Royal Indem.*

*Co. v. Wyckoff Heights Hosp.*, 953 F. Supp. 460, 462-63 (E.D.N.Y. 1996) (internal punctuation and citations omitted) (citing *Scot Typewriter*, 170 F. Supp. at 865). In instances where the corporation at issue may not have a single center of corporate policy, *Hertz* consoles the lower courts that "there will be hard cases," such as when enterprises "may divide their command and coordinating functions among officers who work at several different locations." 130 S. Ct. at 1194. Even then, the Court encourages using the nerve center test, as it "points courts in a single direction. . . [where they] do not have to try to weigh corporate functions, assets, or revenues different in kind, one from the other." *Id.* Relative to other tests that attempt to define corporate location, the nerve center test "provides a sensible test that is relatively easier to apply, not a test that will, in all instances, automatically generate a result." *Id.*

RICO enterprises, however, may not have a single center of corporate policy. Although the "nerve center test" compels the court to determine a principal, i.e., single place of business for a corporation, though there may be many, the test is still instructive in determining the geographic location of "enterprise." The nerve center test's focus on the "brains," that is, where the corporation's decision are made, as opposed to the "brawn," that is, how the corporation acts, shows the Supreme Court's conception of the corporation's geographic location and where it makes its decisions as twinned. Thus, although an enterprise may very well possess several "nerve centers," it is the "brains" not the "brawn" that dictate where the enterprise is located.

Indeed, the divide-and-command coordination structure mentioned in *Hertz* is the same type of

organization contemplated by the Court in *Boyle* in regard to RICO enterprises. There, the court admitted that a RICO enterprise

> need not have a hierarchical structure or a "chain of command"; decisions may be made on an ad hoc basis and by any number of methods—by majority vote, consensus, a show of strength, etc. Members of the group need not have fixed roles; different members may perform different roles at different times.

*Boyle v. United States*, 129 S. Ct. 2237, 2245 (2009). Nonetheless, a RICO enterprise must have some semblance of "interpersonal relationships and a common interest," *id.* at 2244, and must "must function as a continuing unit," *id.* at 2245. Applying the nerve center test here, to determine an "enterprise's" location, similarly avoids the "weigh[ing of] corporate functions, assets, or revenues different in kind, one from the other." *Hertz*, 130 S. Ct. at 1194. An analysis of the territoriality of an "enterprise" in a RICO complaint, therefore, should focus on the decisions effectuating the relationships and common interest of its members, and how those decisions are made.

*4. Territoriality of Plaintiffs' RICO Claims*

The enterprise alleged in Plaintiffs' Complaint comprises of Defendants, "associated distributers, shippers, currency dealers, wholesalers, money brokers, and other participants." (2d Am. Compl. ¶ 158.) Plaintiffs assert that Defendants participated in the management of the enterprise through a pattern of racketeering activity, (*Id.* ¶ 171), and conspired with the other entities involved in the enterprise to violate RICO (*Id.* ¶¶ 174-80). The

Member States allege that they were harmed as a result of this conduct. (*Id.* ¶¶ 164-65; 169, 173, 180.)

Plaintiffs' accusations concerning the operation of the enterprise can be characterized as encompassing a series of steps governed by "interpersonal relationships." *See Boyle*, 129 S. Ct. at 2245. As discussed above, those steps are the "drug smuggling step" performed by the Colombian and Russian mob (2d Am. Compl. ¶¶ 31-32); the "currency swap step" between those mob organizations and European money brokers (*Id.* ¶¶ 37-38); the "currency purchase step" between the money brokers and cigarette importers (*id.* ¶ 39); the "cigarette purchase step" performed by importers and wholesalers (*id.*); and the "cigarette shipping step" performed by wholesalers and Defendants (*id.*).

Nothing in Plaintiffs' Complaint even remotely suggests that Defendants had any hand in the planning, decisions, or "overall corporate policy" of the drug smuggling, currency swap, or currency purchase steps. In fact, the Complaint very clearly and repeatedly articulates that the "overall corporate policy" regarding these steps originates with organized criminal organizations in Europe and South America. (*E.g.*, *id.* ¶¶ 32 (alleging that drugs are sold into Europe via the orders of criminal organizations in Europe and the Middle East); 37 (claiming that European money brokers have "developed methods to bypass the banking systems"); 38-41 (describing South American criminal organizations as "negotiating" contracts with money brokers and "contacting" individuals in Europe).)

Regarding the cigarette purchase and cigarette shipping step, Plaintiffs allege that Defendants

"utilized certain companies to handle and sell their products [that Defendants] knew were involved in criminal activities," (*id.* ¶ 58), and that Defendants "negotiate[ed] business agreements with individuals who [Defendants] knew, or should have known, were involved in the laundering of narcotics proceeds" (*id.* ¶ 63). Yet Plaintiffs do not allege how Defendants' involvement in these activities demonstrated how Defendants organized, orchestrated, planned, or even participated in the remaining criminal steps. Indeed, the Complaint, when read as a whole, strongly suggests the money laundering cycle was directed by South American and European criminal organizations. It is those organizations that began the money laundering process by smuggling drugs; those organizations that swapped currency with money brokers in Europe; and those organizations that controlled the cigarette importers, and thereby completed the money laundering cycle. Defendants' appear to be nothing more than sellers of fungible goods in a complex series of transactions directed by South American and Russian gangs. If there was an "overall corporate policy" of the money laundering enterprise alleged in the Complaint, it issued from those criminal organizations located in South America and Russia—not Defendants in the United States. Because Plaintiffs RICO claims, Counts I through V, are extraterritorial, they do not state a "legally cognizable right of action," and the court must dismiss them under Federal Rule of Civil Procedure 12(b)(6). *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 (2007).

### B. Subject Matter Jurisdiction over Plaintiffs' Remaining Common Law Claims

Aside from their RICO claims, Plaintiffs only remaining claims are predicated on state-law causes of action. As such, the court must assess whether it has subject matter jurisdiction, particularly diversity jurisdiction, over the remainder of this case. *See Giordano v. City of New York*, 274 F.3d 740, 754 (2d Cir. 2001). To do so would require the court to address whether the European Community may bring claims on diversity grounds. If the European Community were not present, however, the court would undoubtedly possess subject matter jurisdiction over the remaining state law claims because the Member States are "foreign states" as contemplated by the diversity statute. *See* 28 U.S.C. § 1332(a)(4).

This very issue was raised at oral argument on October 26, 2010. (Oral Arg. Tr. (Docket Entry # 91) at 8-9.) There, the court expressed its concern about ruling on an issue of such solemnity unless it was absolutely necessary. (*Id.* at 12.) Both sides conceded that the potential jurisdictional defect could be circumvented if the European Community voluntarily withdrew from the action. (*Id.* at 9, 15.) Plaintiffs' counsel stated that he would be amenable to withdrawing the European Community from suit, if the court dismissed Plaintiffs' RICO claims, after consulting with his clients. (*Id.* at 15, 56.) Accordingly, the court reserves decision on Defendants' motion regarding the state-law causes of action to allow Plaintiffs' counsel time to inform the court whether the European Community intends to remain in this suit.

## III. CONCLUSION

Defendants' Motion to Dismiss is GRANTED in part. The court directs Plaintiffs' counsel to inform the court within thirty days of this Memorandum and Order as to whether Plaintiff European Community intends to remain in this suit. The court reserves decision on the remainder of Defendants' motion pending Plaintiffs' counsel's response.

SO ORDERED.

/s/ Nicholas Garaufis,

NICHOLAS G. GARAUFIS
United States District Judge

Dated: Brooklyn, New York
March 7, 2011

## APPENDIX C

**European Cmty. v. RJR Nabisco, Inc.**

**United States Court of Appeals for the Second Circuit**

May 7, 2014, Petition for Rehearing Submitted;

August 20, 2014, Petition for Rehearing Decided

Docket No. 11-2475-cv

Before: LEVAL, SACK, and HALL, Circuit Judges.

PER CURIAM:

In their petition for panel and *en banc* rehearing, the defendants—appellees (collectively, "RJR") contend, among other things, that the Racketeer Influenced and Corrupt Organizations (RICO) statute, 18 U.S.C. § 1961 *et seq.*, requires private plaintiffs to allege a domestic injury, and that this requirement offers an independent basis upon which to dismiss the complaints in this action to the extent that they fail to allege such injuries. We conclude that RICO imposes no such requirement. The petition for panel rehearing is therefore denied.

### DISCUSSION

The RICO statute allows "[a]ny person injured in his business or property by reason of a violation of [18 U.S.C. §] 1962" to sue for and recover treble damages and attorneys' fees. 18 U.S.C. § 1964(c). RJR argues that, regardless of whether the conduct giving rise to this injury may be extraterritorial, the

injury itself must be domestic. *See* Pet. for Reh'g 2, 12. We are not persuaded.

RJR urges us to infer from a paragraph added on rehearing to this Court's decision in *Norex Petroleum Ltd. v. Access Industries, Inc.*, 631 F.3d 29 (2d Cir. 2010) (*per curiam*), a holding that § 1964(c), which forms the basis for the plaintiffs' claim here, requires allegation of a domestic injury. But that added language did no more than confirm that *Norex* dealt only with private causes of action, and that we had no occasion to decide whether RICO could reach extraterritorial conduct "when enforced by the government pursuant to Sections 1962, 1963 or 1964(a) and (b)." *Id.* at 33. Nowhere in *Norex* did we consider or decide whether § 1964(c) requires a domestic injury. We see no reason to construe RICO to include such a requirement.

To establish a compensable injury under § 1964(c), a private plaintiff must show that (1) the defendant "engage[d] in a pattern of racketeering activity in a manner forbidden by" § 1962, and (2) that these "racketeering activities" were the proximate cause of some injury to the plaintiff's business or property. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 495 (1985); *Holmes v. Secs.* Investor Prot. Corp., 503 U.S. 258, 268 (1992).

The Supreme Court has stated unequivocally that "the compensable injury" addressed by § 1964(c) "necessarily is the harm caused by predicate acts sufficiently related to constitute a pattern." *Sedima*, 473 U.S. at 497; *accord Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 457 (2006). "If the defendant engages in a pattern of racketeering activity in a manner forbidden by [§ 1962(a)-(c)], and the

racketeering activities injure the plaintiff in his business or property, the plaintiff has a claim under § 1964(c)." *Sedima*, 473 U.S. at 495. Although we have distinguished *Sedima* when deciding that a plaintiff pursuing a cause of action for a violation of § 1962(a) must plead an "injury from the defendants' investment of racketeering income in an enterprise," *Ouaknine v. MacFarlane*, 897 F.2d 75, 83 (2d Cir. 1990), the Supreme Court's conclusion that RICO's remedial provisions are addressed to violations of RICO predicates still stands when applied to §§ 1962(b), (c) and conspiracies to commit violations of those sections charged under § 1962(d).[1]

The *Sedima* court's conclusion that § 1964(c)'s injury requirement focuses on RICO's predicates dovetails with the extraterritoriality analysis set forth in the panel opinion in this case. Just as "the extraterritorial application of RICO [is] coextensive with the extraterritorial application of the relevant predicate statutes," Am. Slip Op. at 16:18-19, we look to the relevant predicate statute to determine whether the injury caused by a violation thereof must be domestic. If an injury abroad was proximately caused by the violation of a statute which Congress

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[1] Simultaneously with the filing of this opinion, we have amended the original panel opinion in this case to reflect the fact that the plaintiffs have pled a domestic investment with respect to their claims under § 1962(a). As discussed in the panel opinion, the plaintiffs have also alleged that RJR engaged in conduct in the United States satisfying every essential element of each RICO predicate statute that does not apply extraterritorially. Under the circumstances, we see no reason why the plaintiffs should further be required to plead that the injury they suffered from the alleged domestic investment occurred in the United States.

intended should apply to injurious conduct performed abroad, we see no reason to import a domestic injury requirement simply because the victim sought redress through the RICO statute. This conclusion is consistent both with "Congress' self-consciously expansive language and overall approach," as well as "its express admonition that RICO is to 'be liberally construed to effectuate its remedial purposes.'" *Sedima*, 473 U.S. at 498 (quoting Pub. L. No. 91-452, § 904(a), 84 Stat. 922, 947 (1970)). The presumption against extraterritoriality, which is primarily concerned with the question of what *conduct* falls within a statute's purview, does not require a different result. *See, e.g.*, *Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247, 254 (2010) (referring to the question of a statute's extraterritorial application as a question of "what conduct [the statute] reaches").

On the facts of this case, we conclude that the plaintiffs are not required to plead that their alleged injuries actually occurred in the United States.

The petition for panel rehearing is therefore DENIED.

## APPENDIX D

### *EUROPEAN CMTY. V. RJR NABISCO. INC.*

### UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

APRIL 13, 2015, DECIDED
11-2475

PRESENT: ROBERT A. KATZMANN
*Chief Judge*,
DENNIS JACOBS
JOSÉ A. CABRANES,
ROSEMARY S. POOLER,
REENA RAGGI,
RICHARD C. WESLEY,
PETER W. HALL,
DEBRA ANN LIVINGSTON,
GERARD E. LYNCH,
DENNY CHIN,
RAYMOND J. LOHIER, JR.,
SUSAN L. CARNEY,
CHRISTOPHER F. DRONEY,
*Circuit Judges.*

## ORDER

Following disposition of this appeal, an active judge of the Court requested a poll on whether to rehear the case *en banc*. A poll having been conducted and there being no majority favoring *en banc* review, rehearing *en banc* is hereby **DENIED**.

Peter W. Hall, *Circuit Judge*, concurs by opinion in the denial of rehearing *en banc*.

Dennis Jacobs, *Circuit Judge*, joined by José A. Cabranes, Reena Raggi, Debra Ann Livingston, and Gerard E. Lynch, dissents by opinion from the denial of rehearing *en banc*.

José A. Cabranes, *Circuit Judge*, joined by Dennis Jacobs, Reena Raggi, and Debra Ann Livingston, *Circuit Judges*, dissents by opinion from the denial of rehearing *en banc*.

Reena Raggi, *Circuit Judge*, joined by Dennis Jacobs, José A. Cabranes, and Debra Ann Livingston, *Circuit Judges*, dissents by opinion from the denial of rehearing *en banc*.

Gerard E. Lynch, *Circuit Judge*, dissents by opinion from the denial of rehearing *en banc*.

HALL, *Circuit Judge*:

This petition for rehearing in banc challenges the conclusion of the panel, consisting of senior judges Leval and Sack, and me, that the Racketeer Influenced Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961 *et seq.*, applies to foreign conduct when liability is based on "racketeering acts" consisting of violations of predicate statutes which Congress expressly made applicable to foreign conduct. *See European Cmty. v. RJR Nabisco, Inc.*, 764 F.3d 129 (2d Cir. 2014). As Judges Leval and

Sack, being senior judges, have no vote on whether to grant rehearing in banc, I write independently in support of denial of the petition.

In considering the petition for panel rehearing, our panel reexamined our initial view, as well as its compatibility with *Morrison v. Nat'l Australia Bank, Ltd.*, 561 U.S. 247 (2010), and with our court's ruling in *Norex Petroleum Ltd. v. Access Industries, Inc.*, 631 F.3d 29 (2d Cir. 2010), and reaffirmed the soundness of our conclusion.

RICO applies when the evidence shows a pattern of "racketeering activity." 18 U.S.C. §§ 1962, 1964. "Racketeering activity" is defined as "any act . . . indictable under" specified criminal statutes. *Id.* § 1961(1). The criminal statutes specified are colloquially referred to as RICO "predicates." As the panel opinion noted, some of the specified predicate statutes expressly provide that extraterritorial conduct is indictable. *See RJR Nabisco*, 764 F.3d at 136.

Many of the predicates that apply to foreign conduct relate to international terrorism. A few weeks after the terrorist attacks of September 11, 2001, Congress passed the USA PATRIOT Act of 2001 (the "Patriot Act"), an anti-terrorism measure, which, among other provisions, amended RICO by adding to its list of predicates nearly 20 antiterrorism statutes that expressly apply to foreign conduct. Pub. L. No. 107-56, § 813, 115 Stat. 272, 382. The Patriot Act did this by adding those statutes to RICO's definition of "racketeering activity" specified in § 1961(1) as a basis of RICO liability.[1] 18 U.S.C.

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[1] Prior to the Patriot Act, only a few RICO provisions specified extraterritorial application.

§ 1961(1). The House Report for the Patriot Act states, "[t]he RICO provisions in the bill . . . . enhance the civil and criminal consequences of certain crimes that have been deemed RICO predicates by Congress and provide better investigative and prosecutorial tools to identify and prove crimes." H.R. Rep. No. 107-236, at 70 (2001). Since 2001, Congress has added additional explicitly extraterritorial crimes to RICO, for a total of nearly 30 predicate racketeering acts that expressly apply to foreign conduct, nearly all of them relating to international terrorism directed against United States interests. *See, e.g.*, 18 U.S.C. §§ 2332g (conduct involving anti-aircraft missile systems); 2339D (terrorist military training). Some of RICO's predicate statutes indeed apply only to conduct outside the United States. *See, e.g.*, 18 U.S.C. § 2332 (killing, and attempting to kill, "a national of the United States, while such national is outside the United States" (emphasis added)); 18 U.S.C. § 2423(c) (engaging in illicit sexual conduct in foreign places by a U.S. citizen or permanent resident).

The panel opinion concluded that "[b]y incorporating these statutes into RICO as predicate racketeering acts, Congress has clearly communicated its intention that RICO apply to extraterritorial conduct to the extent that extraterritorial violations of those statutes serve as the basis for RICO liability." *RJR Nabisco*, 764 F.3d at 137. That conclusion was sound. The RICO statute explicitly states that acts "indictable under" the specified statutes constitute "racketeering activity," to which RICO liability attaches, and many of these predicate statutes expressly provide that foreign conduct is indictable.

This interpretation of RICO is wholly consistent with *Morrison*. In *Morrison*, the Supreme Court explained that there is a presumption against construing United States statutes as applying extraterritorially but that the presumption is overcome when the statute clearly manifests a congressional intent that it apply extraterritorially. *See Morrison*, 561 U.S. at 265. Courts are not to justify extraterritorial application by speculating that Congress would have wanted that had it focused on the question. On the other hand, when Congress, acting within its powers, has explicitly provided for extraterritorial application of a statute, as it has done by incorporating statutes that apply extraterritorially into RICO as predicates, the statute must be interpreted as Congress has directed. The purpose of *Morrison* was to bar courts from attributing to Congress an intent that its statutes apply extraterritorially in the absence of a clear expression thereof; it was not to prevent courts from giving effect to Congress's clearly manifested intentions that certain statutes apply extraterritorially.

Finally, the panel's holding on this point is consistent with *Norex*. The panel disagreed with the district court's interpretation of *Norex* as concluding that RICO could never have extraterritorial application. To the question of whether RICO, in any of its applications, has extraterritorial reach, the *Norex* opinion devotes two sentences, each of which could have two meanings. The first sentence, derived from our court's prior opinion in *North South Finance Corp. v. Al-Turki*, 100 F.3d 1046, 1051 (2d Cir. 1996), states that "the RICO statute is silent as to any extraterritorial application." The second states that

*Morrison* "forecloses [the Norex plaintiff's] argument that because a number of RICO's predicates possess an extraterritorial reach, RICO itself possesses an extraterritorial reach." *Norex*, 631 F.3d at 33.[2]

The first of these sentences, noting RICO's silence on extraterritorial application, could mean that the RICO statute does not suggest that it might broadly apply *in all of its provisions* to extraterritorial conduct. Alternatively, the words of the sentence could also mean that RICO is "silent" as to whether any of its component provisions can ever apply to extraterritorial conduct. The first interpretation seems far more probable. First, if the statement carries the former meaning, it is indisputably correct. The RICO statute is indeed silent as to general extraterritorial application. There are no words in the statute which suggest, or even discuss, the possibility that foreign conduct might be considered violative of RICO, without regard to whether the particular predicate invoked applies to foreign conduct. On the other hand, if given the second meaning, the statement would be either flatly incorrect, or at least misleading. As explained above,

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[2] Judge Raggi twice quotes *Norex* as saying, because "'RICO is silent as to any extraterritorial application,' . . . therefore, 'it has none.'" *See* Raggi Dissent at 1; *see also id.* at 8. This will mislead the reader, although doubtless unintentionally. It is true that the words "it has none" appear in the *Norex* decision. But in uttering those words, *Norex* was not speaking about the RICO statute. It was simply quoting *Morrison*'s framework for deciding whether a statute has extraterritorial application. *Morrison* stated (and *Norex* quoted), "[W]hen a statute gives no clear indication of an extraterritorial application, *it has none*." *Norex*, 631 F.3d at 32 (emphasis added). *Norex* never said that RICO has no extraterritorial application.

RICO incorporates by reference the terms of other statutes. The Act explicitly states that racketeering activity, which serves as a basis of RICO liability, includes any act "indictable under" the incorporated predicate statutes, a number of which expressly provide that foreign conduct is indictable. Whatever ultimate conclusion one might draw, RICO certainly cannot be fairly described as "silent" on the question whether any predicate acts of racketeering can consist of foreign conduct. Furthermore, the sentence about silence, if construed to mean that RICO contains no indication whether any of its predicate acts of racketeering can include foreign conduct, would seem contradicted by the second sentence on the issue, which recognizes that "a number of RICO's predicates possess an extraterritorial reach." *Norex*, 631 F.3d at 33.

The second sentence, if taken out of context, could have either of two meanings:

(1) In view of *Morrison*, we reject the plaintiff's argument that, by providing for extraterritorial application of *some* of RICO's predicates, Congress manifested a clear intention that RICO have extraterritorial application in *all* of its provisions.

(2) Notwithstanding Congress's express provision that "racketeering activity" include some clearly specified foreign conduct, *Morrison* requires that racketeering activity be construed as excluding all foreign conduct.

The first interpretation is clear, logical, and entirely consistent with *Morrison*. Under *Morrison*, the presumption against extraterritorial applicability requires that statutes be understood not to apply

extraterritorially absent a clear provision for extraterritorial application.[3]

The fact that Congress made clear provision in the terms of RICO that *some* of its predicates apply extraterritorially does not manifest a clear congressional intent that its other provisions also apply extraterritorially. With respect to extraterritorial application of these other provisions, RICO would flunk the *Morrison* test. This is so clear a consequence of *Morrison*'s rule that one short sentence is entirely sufficient to state the point. It requires no further explanation.

On the other hand, if the *Norex* panel had in mind version (2) when it said that "*Morrison* . . . forecloses [the plaintiff's] argument," one would wonder why the panel came to that conclusion. *Id.* Where Congress expressly provided that acts "indictable" under statutes listed in RICO are "racketeering acts," which justify RICO liability, and Congress included

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[3] Judge Raggi suggests that *Morrison*'s discussion of Section 30(b) of the Exchange Act supports her view that RICO can never have extraterritorial application. *See* Raggi Dissent at 8-10. In fact, this portion of Morrison's discussion supports the panel's interpretation of RICO. In *Morrison*, the parties argued that, because one small provision of the Exchange Act could potentially apply extraterritorially, the entire Act should be read as applying extraterritorially. *See Morrison*, 561 U.S. at 263-65. The *Morrison* court rejected this argument, holding that "when a statute provides for some extraterritorial application, the presumption against extraterritoriality operates to limit that provision to its terms." *Morrison*, 561 U.S. at 265 (emphasis added). In *RJR Nabisco*, our panel followed precisely this line of reasoning, holding that where Congress has prescribed extraterritorial application for certain of RICO's predicates, it applies extraterritorially "only to [that] extent." 764 F.3d at 136.

in that list statutes that expressly provide for extraterritorial application (indeed some that apply *only* to foreign conduct), Congress did exactly what *Morrison* requires for extraterritorial application. It manifested a clear intention that RICO apply extraterritorially—to that limited extent. If the *Norex* opinion meant that, notwithstanding this clear manifestation of congressional intent, *Morrison* requires that RICO be interpreted as never applying to foreign conduct, one would wonder why the *Norex* panel reached that conclusion and how it could be justified. The assertion would cry out for further explanation, if indeed any adequate explanation could be found. Notwithstanding the facial ambiguity of the sentence, the brevity of the *Norex* panel's treatment of the subject strongly suggests that it meant to convey the simple, noncontroversial proposition expressed in version (1) above, and not the puzzling proposition expressed in version (2).

In short, recognizing the potential ambiguity in *Norex*'s brief discussion of this point, by far the sounder interpretation of that ruling is that RICO's clear manifestation of intent that *some* of its provisions apply to foreign conduct permits extraterritorial application of RICO in those situations, but does not justify interpreting every provision of RICO as being extraterritorial. The panel's ruling in this case was in full agreement with that proposition.

Some colleagues are troubled by the prospect of applying RICO to extraterritorial conduct, which they deem unwise. Whether this is wise or unwise is not the court's business when Congress has legislated clearly on the issue. Congress provided in the RICO

statute that acts "indictable under" a list of predicate acts are racketeering acts. That ends our inquiry.

I therefore concur with the court's decision to deny rehearing in banc.

**DENNIS JACOBS, Circuit Judge, joined by JOSÉ A. CABRANES, REENA RAGGI, DEBRA ANN LIVINGSTON, and GERARD E. LYNCH, Circuit Judges, dissenting from the denial of rehearing *in banc*:**

I respectfully dissent from denial of rehearing *in banc*. The panel opinion in this appeal is in taut tension with our earlier opinion in *Norex Petroleum Ltd. v. Access Industries. Inc.*, 631 F.3d 29 (2d Cir. 2010) (per curiam). The resulting instability will likely require *in banc* review to reconcile these precedents, or to jettison one of them.

Both cases address the extraterritorial application of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.* They reach dissonant conclusions as to: (1) whether RICO may apply extraterritorially, *compare Norex*, 631 F.3d at 31, *with European Cmty. v. RJR Nabisco, Inc.*, 764 F.3d 129, 136 (2d Cir. 2014); (2) whether Supreme Court precedent "forecloses [the] argument that because a number of RICO's predicate acts possess an extraterritorial reach, RICO itself possesses an extraterritorial reach," *Norex*, 631 F.3d at 33; *compare id.*, *with RJR Nabisco*, 764 F.3d at 136; and (3) the very definition of an extraterritorial application of RICO, namely whether extraterritoriality turns on the foreign locus of the *enterprise* or the foreign locus of the *predicate acts*, *compare Norex* 631 F.3d at 31, 33, *with RJR Nabisco*, 764 F.3d at 136, 142.

The frequency of RICO litigation in this Circuit all but ensures that district courts will face vexing questions about this. Litigation on the fault lines of *Norex* and *RJR Nabisco* is likely to present "a controlling question of law as to which there is substantial ground for difference of opinion" and whose resolution "may materially advance the ultimate termination of the litigation." 28 U.S.C.§ 1292(b). Under such conditions, "district courts should not hesitate to certify an interlocutory appeal." *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 111 (2009).

**JOSÉ A. CABRANES, Circuit Judge, joined by DENNIS JACOBS, REENA RAGGI, and DEBRA ANN LIVINGSTON, Circuit Judges, dissenting from the order denying rehearing en banc:**

The question presented in this civil case is whether the RICO statute[1] applies extraterritorially.

This is an important question, and it has been answered in a novel and artful way by a panel of our Court. Absent review by the Supreme Court, the panel's interpretation will have a significant and long-term adverse impact on activities abroad that we have heretofore assumed were governed primarily by the laws of the territories where those activities occurred.

After a close and considered vote, the en banc court has decided to forgo the possibility of reviewing the

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[1] 18 U.S.C. §§ 1961-1968.

panel's opinion.[2] From that regrettable decision I respectfully dissent.

If this decision remains undisturbed, the prevailing plaintiffs here, the European Community and its member states,[3] will have achieved a pyrrhic victory, and one that the Community's constituents will have cause to regret in the years ahead. Why? Because its citizens, natural and corporate, are among the likely targets of future RICO actions under the panel's interpretation of the statute.

The panel holds that RICO *itself* has an extraterritorial reach if and when one of RICO's *predicate statutes* has an extraterritorial reach. This reasoning conflates the question of whether RICO applies extraterritorially with whether the statute's definition of "racketeering activity" includes predicate offenses that can be charged abroad. If RICO were merely an additional criminal—or, as is often the case, civil—consequence for committing predicate offenses, this view might have some merit. But, as Judge Raggi's compelling dissent makes clear,

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[2] Note that "the decision not to convene the en banc court does not necessarily mean that a case either lacks significance or was correctly decided. Indeed, the contrary may be true." *United States v. Taylor*, 752 F.3d 254, 256 (2d Cir. 2014) (Cabranes, J., dissenting from the denial of rehearing en banc) (describing the special history of *en bancs* in the Second Circuit and highlighting the various factors that may explain why a judge would vote in favor or against the convening of an en banc court).

[3] The European Community was "a governmental body created through collaboration among the majority of the nations of Europe." Appellant's Br. at 6. Since this lawsuit was originally filed, the European Community has been incorporated into the European Union. *See European Cmty. v. RJR Nabisco. Inc.*, 764 F.3d 129, 148 (2d Cir. 2014).

RICO is not simply designed to pile on punishment. Rather, the statute prohibits distinct behavior: conducting, controlling, or funding an *enterprise* through a *pattern* of racketeering.

The panel overlooks the statutory text, going straight to the definition of "racketeering activity," determining that some predicate acts *are* punishable abroad, and then splitting plaintiffs' RICO claim in two — one "domestic" RICO claim for those predicate acts that are not punishable abroad and that defendants allegedly committed in the United States, and one "extraterritorial" RICO claim for those predicate acts that are punishable abroad. This reasoning is flatly inconsistent with years of precedent from this Court, and the Supreme Court, that treats RICO as an offense distinct from its predicate acts. Although it is indisputable that Congress intended for certain RICO predicate statutes to apply to actions or events abroad, there is no clear basis for concluding that Congress intended for RICO itself to go along with them. For this reason, the panel's opinion also may allow an end-run around the revivified presumption against extraterritoriality in *Morrison*[4] and *Kiobel*.[5]

Indeed, there are many important criminal statutes which expressly make extraterritorial activity indictable but say nothing about the availability of RICO in the circumstances they address—perhaps because legislators were focusing more on the prosecutions of crimes, including some involving acts of terrorism, and not on the treble

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[4] *Morrison v. Nat'l Aus. Bank Ltd.*, 561 U.S. 247 (2010).

[5] *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659 (2013).

damages and attorney's fees available under civil actions for damages. It is thus a red herring at best to suggest that, by incorporating a number of mostly terrorism-related crimes within RICO,[6] Congress also intended—without any clear expression of affirmative intent—to give global reach to a whole host of non-terrorism-related[7] civil claims.[8] This is a

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[6] The panel's opinion, Judge Hall's concurrence in support of the order denying rehearing en banc, and Judge Lynch's dissent from the order denying rehearing en banc are all very keen to locate RICO's extraterritoriality within its terrorism-focused predicates. *See RJR Nabisco*, 764 F.3d at 136 (listing a number of RICO's predicate statutes focused on terrorism offenses); Hall Concurrence at 1 ("Many of the predicates that apply to foreign conduct relate to international terrorism."); Lynch Dissent at 1-2 (posing a hypothetical scenario involving a "revolutionary group based largely in a Middle Eastern country" that "plant[s] a bomb near a federal office building" and "behead[s] an abducted American journalist").

[7] Indeed, RICO incorporates many predicates that are quite removed from the dark world of international terrorism. *See* 18 U.S.C. § 1961(1) (incorporating statutes that outlaw trafficking in counterfeit copyrighted work (18 U.S.C. § 2319), embezzlement from pension and welfare funds (18 U.S.C. § 664), and other activities that have little connection to terrorism).

[8] For example, plaintiffs in this Circuit, and others, have sought to use civil RICO claims to challenge supposedly unlawful business practices conducted in foreign countries by alleging, as a predicate act, that one aspect of the scheme involved laundering money through the United States in violation of 18 U.S.C. § 1951. *See, e.g., Hourani v. Mirtchev*, 943 F. Supp. 2d 159, 168 (D.D.C. 2013) (dismissing RICO claim that arose out of "extortion in *Kazakhstan by a Kazakh actor* of Plaintiffs' *Kazakhstan-based* assets"); *Republic of Iraq v. ABB AG*, 920 F. Supp. 2d 517 (S.D.N.Y. 2013) (dismissing RICO claim that related to alleged mismanagement in Iraq of the United Nations Oil-for-Food program); *Cedeno v. Intech Grp., Inc.*, 733 F. Supp. 2d 471 (S.D.N.Y. 2010) (dismissing RICO claim that alleged,

case of Congress giving an inch and the panel taking a mile. The dubiousness of the panel's stretched reasoning—and its direct tension with *Morrison* and *Kiobel*—is only further reinforced by the fact that a plaintiff need not actually prove any of the extraterritorial predicates in order to sustain *a civil claim* for RICO activities alleged to have occurred entirely outside the United States.[9]

To summarize: After more than four decades of experience with this complicated statute, a panel of our Court has discovered and announced a new, and potentially far-reaching, judicial interpretation of that statute—one that finds little support in the history of the statute, its implementation, or the precedents of the Supreme Court; that will encourage a new litigation industry exposing business activities abroad to civil claims of "racketeering";[10] and that will invite our courts to adjudicate civil RICO claims

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*inter alia*, that Venezuelan officials and entities damaged a company incorporated in the British Virgin Islands). The panel in *RJR Nabisco*, which identifies money laundering as a predicate act that extends RICO extraterritorially, welcomes such claims into federal court. *See* 764 F.3d at 139-40.

[9] It is also worth noting that the United States, in its *amicus* brief, does not adopt the predicate-centric view of the panel. Needless to say, the Government also does not invoke the panel's view that RICO's criminal predicates extend the extraterritorial jurisdiction of the statute for non-terrorism-related civil claims. *See* Brief of the United States 9-20.

[10] *See Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 529-30 (1985) (Powell, J., dissenting) (lamenting the expansion of RICO to include civil racketeering charges "brought—in the unfettered discretion of private litigants—in federal court against legitimate businesses seeking treble damages in ordinary fraud and contract cases").

grounded on extraterritorial activities anywhere in the world.

**REENA RAGGI, Circuit Judge, joined by DENNIS JACOBS, JOSÉ A. CABRANES, and DEBRA ANN LIVINGSTON, Circuit Judges, dissenting from the denial of rehearing *en banc*:**

Since *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010) ("*Morrison*"), courts in this circuit and around the nation uniformly have held that the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.*, does not apply extraterritorially. These courts have sometimes differed in how they determined whether a particular RICO application was domestic or extraterritorial, but their underlying assumption has been consistent: "RICO is silent as to any extraterritorial application" and, therefore, "it has none." *Norex Petroleum Ltd. v. Access Indus., Inc.*, 631 F.3d 29, 33 (2d Cir. 2010) ("*Norex*") (internal quotation marks omitted).[1]

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[1] *See United States v. Chao Fan Xu*, 706 F.3d 965, 974-75 (9th Cir. 2013) (recognizing presumption that RICO does not apply extraterritorially); *Hourani v. Mirtchev*, 943 F. Supp. 2d 159 (D.D.C.2013); *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 935 F. Supp. 2d 666 (S.D.N.Y. 2013); *Adhikari v. Daoud & Partners*, No. 09 Civ. 1237, 2013 WL4511354 (S.D. Tex. Aug. 23, 2013); *Petroleos Mexicanos v. SK Eng'g & Constr. Co.*, No. 12 Civ. 9070 (LLS), 2013 U.S. Dist. LEXIS 107222, 2013 WL 3936191 (S.D.N.Y. July 30, 2013); *Republic of Iraq v. ABB AG*, 920 F. Supp. 2d 517 (S.D.N.Y. 2013); *Tymoshenko v. Firtash, No. 11 Civ. 2794 (KMW)*, 2013 U.S. Dist. LEXIS 42754, 2013 WL 1234821 (S.D.N.Y. Mar. 26, 2013); *Mitsui O.S.K. Lines, Ltd. v. Seamaster Logistics, Inc.*, 871 F. Supp. 2d 933 (N.D. Cal. 2012); *Aluminum Bahrain B.S.C. v. Alcoa Inc.*, No. 8-299, 2012 U.S. Dist. LEXIS 80478, 2012 WL 2093997 (W.D. Pa. June 11, 2012);

In this civil case, a panel of the court untethers RICO from its mooring on United States shores and concludes, for the first time, that the statute reaches overseas—even to a foreign enterprise conducted through an essentially foreign pattern of racketeering—so long as one predicate act is alleged that references conduct that could be prosecuted under a criminal statute that itself reaches extraterritorially. *See European Cmty. v. RJR Nabisco. Inc.*, 764 F.3d 129, 136-37 (2d Cir. 2014) ("*RJR Nabisco*").[2] That same panel concludes that

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*Chevron Corp. v. Donziger*, 871 F. Supp. 2d 229 (S.D.N.Y. 2012); *Sorota v. Sosa*, 842 F. Supp. 2d 1345 (S.D. Fla. 2012); *In re Toyota Motor Corp.*, 785 F. Supp. 2d 883 (C.D. Cal. 2011); *United States v. Philip Morris USA. Inc.*, 783 F. Supp. 2d 23 (D.D.C. 2011); *Cedeno v. Intech Grp., Inc.*, 733 F. Supp. 2d 471 (S.D.N.Y. 2010).

[2] As summarized by the *RJR Nabisco* panel, the racketeering scheme here at issue involved a multi-step process beginning with the smuggling of narcotics into Europe by Colombian and Russian criminal organizations, which "laundered" their euro proceeds through money brokers. Those brokers then sold the euros at a discount to cigarette importers who used the money to purchase RJR's cigarettes from wholesalers. The complaint alleges that RJR directed and controlled this money-laundering scheme by, *inter alia*, concealing the identity of cigarette purchasers, shipping cigarettes through Panama to shield the transactions from scrutiny, and bribing Colombian border guards in order to allow its employees to enter the country illegally to receive payments for cigarettes and then to travel to Venezuela, from where funds were wired to RJR Nabisco accounts in the United States. *See RJR Nabisco*, 764 F.3d at 135. In addition to extraterritorially proscribed money laundering, *see* 18 U.S.C. § 1956(f), the complaint charges RJR Nabisco with the predicate extraterritorial crime of providing material support for terrorism insofar as some cigarettes acquired in the described scheme were sold in Iraq to or for the benefit of

whether a RICO claim is domestic or extraterritorial depends not on the locus of the enterprise or the pattern of racketeering (or on some relationship between the two), but instead on the location of particular predicate acts. *See id.* at 140-41. In so holding, the panel rejects the district court's determination that RICO's focus is the enterprise, that the locus of the enterprise determines whether RICO is being applied domestically or extraterritorially, and that RICO has no extraterritorial application to foreign enterprises. *See European Cmty. v. RJR Nabisco, Inc.*, No. 02 Civ. 5771 (NGG), 2011 U.S. Dist. LEXIS 23538, 2011 WL 843957, at *4-7 (E.D.N.Y. Mar. B. 2011).

RJR Nabisco has moved for this court to rehear the case *en banc*. I vote to grant that review because, like a number of my colleagues, I think the panel's treatment of RICO's extraterritorial application conflicts with controlling precedent, specifically, (1) the Supreme Court's holding in *Morrison*, which mandates a presumption against the extraterritorial application of United States statutes unless Congress clearly expresses an affirmative intent to have a statute reach abroad; and (2) our holding in *Norex* (relying on Morrison) that RICO does not apply extraterritorially even though some of its predicate acts are crimes that could be prosecuted extraterritorially.

My concern with the panel's reliance on individual predicate acts to support RICO's extraterritorial reach extends also to its reliance on predicate acts to determine when RICO is being applied domestically

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various terrorist groups. *See* Second Am. Compl. ¶¶ 75-83; 18 U.S.C. § 2339B(d)(2).

and extraterritorially. *Morrison* used the "focus" of a statute to determine its application. 561 U.S. at 266. Precedent emphasizes that RICO's "focus" is *not* the alleged predicate acts, but the relationship between a pattern of racketeering (demonstrated by predicate acts) and an identified enterprise. *See, e.g., United States v. Basciano,* 599 F.3d 184, 205-06 (2d Cir. 2010); *see also United States v. Chao Fan Xu,* 706 F.3d 965, 975 (9th Cir. 2013) (collecting cases identifying either "enterprise" or "pattern of racketeering" as RICO's focus). Nor can the *RJR Nabisco* panel suggest otherwise by characterizing RICO as an aggravating statute that simply adds new consequences to the predicate offenses. *See RJR Nabisco,* 764 F.3d at 135. That premise, from which the rest of the panel's analysis flows, is also at odds with precedent. Successive prosecutions for greater and lesser included offenses implicate double jeopardy. *See Brown v. Ohio,* 432 U.S. 161, 167-69 (1977). But prosecutions for both RICO and predicate acts of racketeering do not. *See United States v. Basciano,* 599 F.3d at 205-06.

In light of these concerns, this court needs to give further consideration to two issues: (1) whether RICO applies extraterritorially, and (2) the criteria for determining whether a RICO claim is domestic or extraterritorial. Insofar as a majority of the active members of the court decline to convene en banc for this purpose, I respectfully dissent.

### *1. The Extraterritoriality Holdings in* Morrison *and* Norex

To explain how the panel decision conflicts with controlling extraterritoriality precedent—both generally, as stated by the Supreme Court in

*Morrison*, and specifically, as applied to RICO by this court in *Norex*—it is necessary briefly to discuss that precedent.

In *Morrison*, the Supreme Court reaffirmed a strong presumption against the extraterritorial application of any United States statute "unless there is the affirmative intention of the Congress clearly expressed to give a statute extraterritorial effect." 561 U.S. at 255 (internal quotation marks omitted). *Morrison* found no such clear expression of affirmative intent in Section 10(b) of the Securities Exchange Act of 1934, even though the statute's prohibition of fraud "in connection with the purchase or sale of any security" referenced means or instrumentalities of interstate commerce, which by definition includes commerce with foreign countries. *See* 15 U.S.C. § 78j(b); *id.* § 78c(a)(17). In so holding, the Supreme Court specifically rejected the "conduct" and "effects" tests developed by this court to "discern" when Congress would have wanted a statute, otherwise "silent as to . . . extraterritorial application," to reach abroad. *See Morrison*, 561 U.S. at 255-61 (discussing and rejecting that approach in favor of application of presumption against extraterritoriality "in all cases"). To be sure, Morrison noted that the presumption against extraterritoriality is not a clear statement rule. In short, it does not demand that a statute expressly say "this law applies abroad"; "context can be consulted as well." *Id.* at 265.[3] But *Morrison* emphasized that,

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[3] I understand this to mean statutory context, not legislative history, because if Congress's intent remains uncertain after all canons of construction are applied, *see generally Cohen v. JP Morgan Chase & Co.*, 498 F.3d 111, 116 (2d Cir. 2007) (allowing consideration of legislative history only in those circumstances),

whatever the purported indicator of extraterritoriality, it must *clearly* and *affirmatively* signal Congress's intent for the statute to reach outside this country's borders. *See id.* Statutory constructions that are merely "possible . . . do not override the presumption against extraterritoriality." *Id.* at 264.[4]

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Congress can hardly be said to have clearly expressed its affirmative intent for a statute to reach extraterritorially.

[4] In fact, Congress is generally explicit in stating its intent for a statute to reach extraterritorially. The money laundering and material support predicates alleged here are proscribed by criminal statutes that explicitly provide for extraterritoriality. As to money laundering, Congress has stated,

> There is extraterritorial jurisdiction over the conduct prohibited by this section if—(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and (2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.

18 U.S.C. § 1956(f). As to material support for terrorism, Congress has stated, "There is extraterritorial Federal jurisdiction over an offense under this section." *Id.* § 2339B(d)(2).

Dozens of other statutes are similarly explicit. *See, e.g., id.* § 1596 (authorizing "extra-territorial jurisdiction" over any human trafficking offense under specified statutory sections if offender is United States national, permanent resident alien, or present in United States); 21 U.S.C. § 959 (stating that prohibition on manufacture or distribution of controlled substances with intent to import "is intended to reach acts of manufacture or distribution committed outside the territorial jurisdiction of the United States").

The intended extraterritorial application of other statutes is made clear from context: they proscribe only conduct occurring outside this country. *See* 18 U.S.C. § 1119 (stating that United States national who "kills or attempts to kill a national of the United States while such national is outside the United States

As this court has long recognized, the "RICO statute is silent as to any extraterritorial application." *North South Fin. Corp. v. Al-Turki*, 100 F.3d 1046, 1051 (2d Cir. 1996) (emphasis added); *see also United States v. Chao Fan Xu*, 706 F.3d at 974 (9th Cir.) (same). Nevertheless, before *Morrison*, we had borrowed the conduct and effects tests from our securities and antitrust jurisprudence to allow RICO to reach extraterritorially in some circumstances. *See North South Fin. Corp. v. Al-Turki*, 100 F.3d at 1051-52. In *Norex*, however, we acknowledged that *Morrison* abrogated these tests, mandating both a generally applicable presumption and "a bright-line rule: absent a clear Congressional expression of a statute's extraterritorial application, a statute lacks extraterritorial reach." *Norex*, 631 F.3d at 32. Applying this rule to RICO, *Norex* identified no clear expression of congressional intent for extraterritorial application. Indeed, *Norex* reiterated this court's earlier categorical conclusion that the RICO statute is "'silent as to any extraterritorial application,'" *id.* (quoting *North South Fin. Corp. v. Al-Turki*, 100 F.3d at 1051, and declining to treat statement as dictum),

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but within the jurisdiction of another country" is subject to criminal penalties as if act had been committed within special maritime and territorial jurisdiction of United States); *id.* § 1204 (prohibiting retention of "child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights").

In all these circumstances, courts need not engage in "divining what Congress would have wanted if it had thought of the situation before the court," an exercise prohibited by *Morrison*, 561 U.S. at 261, because Congress has made its extraterritorial intent clear. The RICO statute, however, does not admit such a conclusion.

and concluded therefrom that "'it has none,'" *id.* (quoting *Morrison*, 561 U.S. at 255).[5]

*Norex* then proceeded to hold that *Morrison* defeated the argument that, just "because a number of RICO's predicate acts possess an extraterritorial reach, RICO itself possesses an extraterritorial reach." *Id.* at 33. In so ruling, *Norex* cited to *Morrison*'s discussion of Section 30(b) of the Exchange Act, *see* 15 U.S.C. § 78dd(b*)* (stating that Act and attending rules and regulations "shall not apply to any person insofar as he transacts a business in securities *without the jurisdiction of the United States*" unless he does so in violation of regulations promulgated "to prevent . . . evasion" of Act (emphasis added)). The Solicitor General had argued that the exemption would have no function if the Act did not apply in the first instance to securities transactions abroad. *See Morrison*, 561 U.S. at 264. While acknowledging that the urged construction was "possible," the Supreme Court concluded that such a possibility was insufficient to overcome the presumption against extraterritoriality. *See id.* (observing that it would be "odd for Congress to indicate the extraterritorial

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[5] Judge Hall, concurring in the denial of rehearing *en banc*, submits that this description of *Norex* is misleading because "*Norex* never said that RICO has no extraterritorial application." Hall, J., Op. Concurring in Denial of *Reh'g En Banc*, ante at []. Perhaps not *in haec verba*. But I respectfully submit that is the conclusion fairly derived from *Norex*'s (1) quotation of *Morrison*'s rule that "'[w]hen a statute gives no clear indication of an extraterritorial application, it has none,'" *Norex*, 631 F.3d at 32 (quoting *Morrison*, 561 U.S. at 255), and (2) its immediately following reiteration that RICO "'is silent as to any extraterritorial application,'" *id.* (quoting *North South Fin. Corp. v. Al-Turki*, 100 F.3d at 1051). Silence is hardly a clear indicator.

application of the whole Exchange Act by means of a provision imposing a condition precedent to its application abroad" or by limiting "enabling regulations . . . to those preventing 'evasion' of the Act, rather than all those preventing 'violation,'" and concluding that provision was "directed at actions abroad that might conceal a domestic violation or might cause what would otherwise be a domestic violation to escape on a technicality"). Indeed, the Supreme Court ruled that, even when a statute clearly "provides for some extraterritorial application," as in the case of Section 30(a), 15 U.S.C. § 78dd(a), "the presumption against extraterritoriality operates to limit that provision to its terms." *Morrison*, 561 U.S. at 265.[6]

Norex's specific reference to this last quoted excerpt from *Morrison*, *see* 631 F.3d at 32, together with its reiteration of RICO's silence "as to any extraterritorial application," *id.* (internal quotation marks omitted), signal that the extraterritorial reach of RICO's predicate acts must also be limited "to [their] terms." The terms of the extraterritorial crimes identified as RICO predicates authorize extraterritorial jurisdiction for prosecutions under

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[6] By its terms, Section 30(a) *expressly* reaches certain extraterritorial securities transactions, notably, when the issuer has prescribed ties to the United States and the defendant broker or dealer acts in contravention of SEC rules and regulations. Thus, the Supreme Court's treatment of Section 30(a)—limiting the extraterritorial reach of that provision to its terms—should not be conflated with its rejection of the argument that Section 30(b) only made sense if the Exchange Act applied extraterritorially. *See Morrison*, 561 U.S. at 263-65.

the referenced proscribing criminal statutes, not for RICO claims alleging such predicates.

To conclude otherwise, the *RJR Nabisco* panel must read *Norex* narrowly to hold only that the inclusion of extraterritorial crimes in RICO's list of predicate acts does not clearly signal Congress's intent for RICO to reach "extraterritorially *in all of its applications*." *RJR Nabisco*, 764 F.3d at 136 (emphasis in original). The panel pronounces it error to interpret *Norex* to hold "that RICO can never have extraterritorial reach in *any* of its applications." *Id.* (emphasis in original). Thus freed from *Norex*'s categorical pronouncement that "RICO is silent as to *any* extraterritorial application," 631 F.3d at 32 (internal quotation marks omitted; emphasis added), the panel concludes that Congress did indeed clearly express its affirmative intent to have RICO reach extraterritorially when a claim—including a civil claim—alleges a pattern of racketeering involving predicate acts proscribed by criminal statutes with extraterritorial reach: "By incorporating these [extraterritorially reaching criminal] statutes into RICO as predicate racketeering acts, Congress has clearly communicated its intention that RICO apply to extraterritorial conduct to the extent that extraterritorial violations of those statutes serve as the basis for RICO liability." *RJR Nabisco*, 764 F.3d at 137. I am not persuaded by this analysis and, thus, think we need to rehear this case *en banc*.

First, the *Norex* decision is not so easily cabined as the *RJR Nabisco* panel suggests. The complaint in *Norex* alleged predicate acts of money laundering by United States citizens in amounts exceeding

$10,000.[7] Such conduct, like the money laundering at issue in *RJR Nabisco*, is specifically proscribed extraterritorially. *See* 18 U.S.C. § 1956(a), (f). Thus, *Norex*'s rejection of RICO extraterritoriality is not factually distinguishable from this case so as to signal only a general rule not applicable when a plaintiff pleads extraterritorial crimes as RICO predicates.

Second, and in any event, *Norex* and *Morrison* do not permit this court to locate a clear expression of *RICO*'s extraterritoriality in pleaded predicates that are themselves extraterritorial crimes. *The RJR Nabisco* panel justifies that conclusion by observing that certain *RICO* predicates reference crimes that apply only to extraterritorial conduct. *See RJR Nabisco*, 764 F.3d at 136 (citing 18 U.S.C.§ 2332(a) (prohibiting killing United States national "while such national is outside the United States"), and *id.* § 2423(c) (prohibiting "engaging in illicit sexual conduct in foreign places")). The panel finds it "hard to imagine why Congress would incorporate these statutes as RICO predicates if RICO could *never* have extraterritorial application." *Id.* at 136 (emphasis in original). *Morrison*, however, effectively declined to recognize such speculative reasoning as a substitute for Congress's clear expression of affirmative intent when it rejected the Solicitor General's argument that an exception to extraterritoriality in the Exchange Act made sense only if the statute applied extraterritorially. *See* 561 U.S. at 263-65.

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[7] *See* First Am. Compl. ¶¶ 5-11, 168-70, 182-234, 304-16, J.A. 5579-81, 5556-57, 5559-68, 5579-81, *Norex Petroleum Ltd. v. Access Indus., Inc.*, No. 07-4553-cv (2d Cir. filed Jan. 9, 2008).

In fact, it is not hard to imagine why Congress would have included exclusively extraterritorial crimes in the list of RICO predicates without necessarily intending to extend RICO's own reach extraterritorially. Domestic enterprises can be conducted through patterns of racketeering manifested by foreign as well as domestic acts. For example, a domestic crime syndicate might be conducted through a pattern of racketeering characterized mostly by domestic drug trafficking and money laundering, but with its continuation enabled by the murder of an American rival trafficker while the rival was outside the United States. Congress could well have determined that prosecutors should be allowed to prove such an extraterritorial murder as a racketeering predicate in an essentially domestic pattern of racketeering to demonstrate the intended continuity of the pattern through which the domestic enterprise would be conducted. *See generally H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239-41 (1989) (discussing relatedness and continuity requirements of racketeering pattern).

Similarly, a foreign terrorist organization might engage in a pattern of racketeering consisting primarily of attacks executed in the United States, but financed with funds collected abroad. *See* 18 U.S.C. § 2339C(a), (b)(2)(C)(ii). Congress could have determined that prosecutors seeking to prove the relationship of the essentially domestic pattern to the foreign enterprise, as well as the means for

ensuring continuity, should be allowed to prove such criminal extraterritorial financing.[8]

What is *not* clear from the inclusion of extraterritorially reaching crimes in the list of RICO predicates, however, is Congress's affirmative intent further to extend RICO's reach to foreign enterprises conducted through essentially foreign patterns of racketeering whenever extraterritorial crimes are alleged predicate acts. The panel submits that such a construction best ensures that "a defendant associated with a foreign enterprise" is not permitted "to escape liability for conduct that indisputably violates a RICO predicate," citing as an example the killing of a United States national abroad, conduct made criminal by 18 U.S.C. § 2332. *RJR Nabisco*, 764 F.3d at 138. The concern is unwarranted. The United States can always prosecute persons for such extraterritorial homicides directly under § 2332. Indeed, it has successfully done so. *See, e.g., In re Terrorist Bombings of U.S. Embassies in E. Afr.*, 552 F.3d 93, 107 (2d Cir. 2008) (upholding, *inter alia*, convictions for conspiracy to murder U.S. nationals in violation of § 2332). Moreover, the maximum punishment a defendant would face under § 2332—death—is more, not less, severe than the maximum life sentence he would face if convicted of violating

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[8] This second hypothetical assumes that RICO can apply *domestically* to a foreign enterprise engaged in a *pattern* of racketeering within the United States. The law on this point is not settled, as discussed *infra* at []. The point warrants our consideration *en banc* particularly if, as I explain in that same discussion, RICO's domestic or extraterritorial application cannot be determined by reference to individual predicate acts, which are not the statute's focus. *See Morrison*, 561 U.S. at 267; *United States v. Basciano*, 599 F.3d at 205-06.

RICO with a § 2332 predicate. *Compare* 18 U.S.C. § 2232, *with id.* § 1963(a).

Thus, I respectfully submit that it raises a false alarm to suggest that prosecutors will be thwarted in bringing terrorists to justice unless we recognize RICO to extend extraterritorially to foreign enterprises conducted through foreign patterns of racketeering upon the pleading of any extraterritorial-crime predicate. Rather, it is civil litigants, such as plaintiffs here, who need such a ruling to pursue treble damages in United States courts for foreign racketeering injuries.[9]

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[9] In focusing on terrorism hypotheticals, some of my colleagues reference the legislative objectives of the USA PATRIOT Act, which added certain extraterritorial terrorism crimes to RICO's list of predicates. *See* Hall, J., Op. Concurring in Denial of Reh'g *En Banc, ante* at []; Lynch, J., Op. Dissenting from Denial of Reh'g *En Banc, post* at []. For reasons discussed *supra* at [], I do not think *Morrison* admits consideration of such extra-textual sources in applying the presumption against extraterritoriality.

Furthermore, the cited references indicate only Congress's intent to allow RICO to be used against terrorists. They say nothing about whether that application can be extraterritorial as well as domestic. Indeed, the 9/11 terrorist attacks that prompted the USA PATRIOT Act involved murderous activity *within* the United States by a domestic cell of terrorists affiliated with a foreign organization.

In any event, *RJR Nabisco*'s predicate-based analysis is not limited to terrorism crimes but reaches the range of extraterritorial crimes listed as RICO predicates. For example, Congress included in that list 18 U.S.C. § 2423(c) (prohibiting commercial sex abroad with persons younger than 18). Does that express its clear intent for RICO to apply extraterritorially to a bordello enterprise in Thailand that secures underage prostitutes for American travelers to that country? The mere possibility that Congress's intent could have reached that far is

It is particularly difficult, however, to locate a clear expression of affirmative congressional intent for *civil* RICO claims to reach extraterritorially in the inclusion of extraterritorial crimes in RICO's list of predicates. By their terms, the listed extraterritorial statutes authorize only *criminal* proceedings, not private actions. Victims of such crimes may be awarded restitution as part of a defendant's sentence or may be allowed to petition the government for shares of forfeited proceeds. *See* 18 U.S.C. §§ 3663, 3663A; 28 C.F.R. § 9.1 *et seq.* But the listed extraterritorial statutes—and specifically the money laundering and material support statutes here at issue—themselves afford private persons no civil causes of action. Thus, while the *RJR Nabisco* panel purports to be recognizing RICO extraterritoriality only to the extent "liability or guilt could attach to extraterritorial conduct under the relevant RICO predicate," *RJR Nabisco,* 764 F.3d at 136, it in fact moves RICO well beyond the referenced predicate in concluding that a plaintiff who pleads extraterritorial-crime predicates can pursue a civil RICO claim for treble damages, although Congress provided no civil claim in the predicate criminal statute.

Might Congress have approved such an extension of RICO if it had considered such a circumstance? Possibly. But *Morrison* does not permit courts to apply statutes extraterritorially by "divining what Congress would have wanted if it had thought of the

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not enough to override the presumption against extraterritoriality. *See Morrison,* 561 U.S. at 264. Such caution is all the more warranted when *RJR Nabisco*'s reasoning is applied to a civil RICO claim, for reasons I now discuss in text.

situation before the court." 561 U.S. at 261. No more does it permit the *possibility* of such congressional intent to overcome the presumption against extraterritoriality. *See id.* at 264. Only a clear expression of Congress's affirmative intent that a statute reach extraterritorially can clear that hurdle. *See id.*; *accord Norex*, 631 F.3d at 32.

For the reasons stated, I do not think *Morrison* and *Norex* permit our court to identify such a clear expression of affirmative intent with respect to the civil RICO claim here at issue. Accordingly, the court should rehear this case *en banc* to ensure a RICO extraterritoriality determination consistent with these precedents.

*2. The Panel Assigns RICO Predicates a Greater Role than Warranted Under RICO Jurisprudence*

The panel's decision to ground RICO's extraterritorial reach in the pleading of certain predicate acts also raises concerns under RICO jurisprudence. It has long been understood that the conduct proscribed by RICO is not the individual predicate acts but, rather, the overall pattern of racketeering activity. *See, e.g.*, *United States v. Basciano*, 599 F.3d at 205-06 ("[I]t is the pattern of racketeering activity, not the predicates, that is punished by a racketeering conviction."); *see generally Agency Holding Corp. v. Malley-Duff & Assocs.*, 483 U.S. 143, 149 (1987) (observing that "RICO is designed to remedy injury caused by a pattern of racketeering"). More precisely, what RICO prohibits are specified interactions between an identified enterprise and a pattern of racketeering. *See, e.g.*, *United States v. Russotti*, 717 F.2d 27, 33

(2d Cir. 1983) ("[I]t is neither the enterprise standing alone nor the pattern of racketeering activity itself which RICO criminalizes. Rather, the *combination* of these two elements is the object of punishment under RICO." (emphasis in original)). Thus, RICO's focus is not on any particular alleged predicate act but on (1) whether such predicate acts as are proved demonstrate the requisite "pattern of racketeering," a matter largely dependent on their relatedness and continuity, *see H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. at 239-41; *accord United States v. Daidone*, 471 F.3d 371, 374-76 (2d Cir. 2006); and (2) whether that pattern or its proceeds are used to (a) "invest" in, (b) "acquire or maintain . . . any interest in or control of," or (c) "conduct or participate . . . in the conduct of" the alleged enterprise, 18 U.S.C. § 1962(a)-(c).

I respectfully submit that this precedent does not permit RICO to be construed as a statute that simply "adds new criminal and civil consequences to the predicate offenses." *RJR Nabisco*, 764 F.3d at 135. That construction is further refuted by precedent permitting "a defendant to be prosecuted—either simultaneously or at separate times—for both substantive racketeering and the predicate crimes evidencing the pattern of racketeering." *United States v. Basciano*, 599 F.3d at 205; *cf. Brown v. Ohio*, 432 U.S. at 167-69 (holding that double jeopardy bars successive prosecutions for greater and lesser included offenses).

When the role assigned to predicate acts under our RICO jurisprudence is thus understood—not as the object of the statute, but as a means for satisfying its pattern element—it is difficult to identify a clear expression of affirmative intent for civil RICO claims to reach extraterritorially simply from Congress's

inclusion of some extraterritorially reaching crimes in the list of possible RICO predicates, even when pleaded as part of the pattern of racketeering.

That argument is defeated, in any event, by the fact that RICO does not require proof of every alleged predicate act or of any particular predicate acts. *See United States v. Basciano*, 599 F.3d at 206. The law demands only that a RICO plaintiff prove sufficient predicate acts (but not fewer than two) to demonstrate the required pattern of racketeering. *See id.* In short, a plaintiff alleging a pattern of racketeering evidenced by various RICO predicates—some applying extraterritorially, others applying domestically—might well carry his pattern burden without proving any of the alleged extraterritorial predicates that, under the panel's formulation, are the singular basis for permitting a RICO claim to reach extraterritorially. It would be curious for Congress to locate a statute's extraterritorial reach in an allegation that need not be proved. If, on the other hand, the panel intended to condition RICO's extraterritorial reach on *proof* of the alleged extraterritorial-crime predicates—which is not apparent from its opinion—it departs even further from our RICO jurisprudence in requiring not simply proof of a pattern of racketeering, but proof of particular predicates.

Thus, to ensure consistency in the role our jurisprudence assigns to RICO predicate acts, the court should convene *en banc* to clarify that Congress's identification of some extraterritorial crimes as RICO predicates does not clearly express an affirmative intent for civil RICO claims to reach extraterritorially whenever a plaintiff alleges such crimes as predicate acts.

*3. Determining RICO's Domestic and Extraterritorial Application*

This case warrants rehearing for yet a third reason: to clarify how courts should distinguish RICO's domestic and extraterritorial applications. Before *RJR Nabisco*, the understanding that RICO does not apply extraterritorially required courts to determine whether a particular RICO claim was domestic or extraterritorial. That inquiry remains necessary after *RJR Nabisco* because the panel, in its effort to distinguish *Norex*, decides that RICO does not apply extraterritorially when the alleged predicates are not extraterritorial crimes. Without regard to the locus of the enterprise or pattern of racketeering, the panel rules that plaintiffs' claim properly applied RICO *extraterritorially* to the extent it alleged extraterritorial-crime predicates, at the same time that the claim properly applied RICO *domestically* to the extent it alleged domestic-crime predicates occurring in the United States. This reliance on individual predicate acts to determine whether a RICO claim is domestic or extraterritorial is at odds with *Morrison*, *Norex*, and our RICO jurisprudence.

In *Morrison*, the Supreme Court concluded that a statute's application is properly determined by its "focus," identified by looking to "the objects of the statute's solicitude." 561 U.S. at 267. Applying this standard to Section 10(b) of the Exchange Act, which prohibits manipulative or deceptive practices in connection with the purchase or sale of securities, *Morrison* concluded that the statute's focus was not on deceptive conduct, but on the purchase or sale of securities in the United States. *See id.* ("Section 10(b) does not punish deceptive conduct, but only deceptive conduct 'in connection with the

purchase or sale of any security registered on a national securities exchange or any security not so registered.'" (quoting 15 U.S.C. § 78j(b))). Thus, the Exchange Act—which the Court had already held did not apply extraterritorially—could not be applied domestically to challenge foreign purchases or sales of securities based on deceptive conduct in the United States. Dor estic application required the purchase or sale of securities in this country. *See id.*

In *Norex*, this court cited Morrison to reject a claim that alleged predicate acts of racketeering committed within the United States—mail and wire fraud, money laundering, Hobbs Act and Travel Act violations, and bribery—allowed RICO to apply domestically to an international scheme to take over part of the Russian oil industry. *See Norex*, 631 F.3d at 31-32.

The *RJR Nabisco* panel follows neither *Morrison* nor *Norex* in determining whether plaintiffs' claims here apply RICO extraterritorially or domestically. With no identification of RICO's "focus," as seemingly required by *Morrison*, the *RJR Nabisco* panel looks to predicate acts alone to determine RICO's application, in seeming contravention of *Norex*. Thus, the panel concludes that plaintiffs' claim permissibly applies RICO extraterritorially for those predicate acts occurring abroad (money laundering and support for terrorism), and permissibly applies RICO domestically for those predicate acts occurring in this country (wire fraud, money fraud, and Travel Act violations). *See RJR Nabisco*, 764 F.3d at 140-43. This novel approach—which makes individual predicates determinative of RICO's application without regard to the locus of the overall pattern of

racketeering or the enterprise—warrants *en banc* review for several reasons.

First, this court needs to clarify whether *Morrison* does indeed require courts to look to RICO's "focus" to determine its domestic or extraterritorial application.

Second, the court needs either to identify RICO's "focus" or to resolve the tension between *Norex* and *RJR Nabisco* as to the role predicate acts can play in determining RICO's application.

These matters raise significant challenges. Following *Morrison*, and before *RJR Nabisco*, courts had generally assumed that RICO's domestic or extraterritorial application should be determined by reference to "the 'focus' of congressional concern" in enacting the statute. *Morrison*, 561 U.S. at 266; *see United States v. Chao Fan Xu*, 706 F.3d at 975 (collecting cases). *Norex*'s citation to *Morrison* in its rejection of plaintiffs domestic application argument in that case is consistent with this assumption. *See Norex*, 631 F.3d at 32. Thus, the *RJR Nabisco* panel's failure to identify RICO's focus, or to explain why it did not need to do so to determine the statute's application in this case, creates confusion in this circuit as to *Morrison*'s controlling effect. This court needs to clarify the matter *en banc*.

Further, courts that have applied *Morrison*'s "focus" standard to RICO have found the inquiry "far from clear-cut." *United States v. Chao Fan Xu*, 706 F.3d at 975. "[T]wo camps" have emerged: one locating RICO's focus in the "enterprise," the other in the "pattern of racketeering." *Id.* (collecting cases). The district court in this case joined the first camp based on the fact that RICO prohibits only racketeering activity connected in specified ways to an enterprise,

which it thought paralleled *Morrison*'s construction of the Exchange Act to punish only frauds in connection with domestic securities transactions. *See European Cmty. v. RJR Nabisco. Inc.*, 2011 U.S. Dist. LEXIS 23538, 2011 WL 843957, at *5 (citing *Morrison*, 561 U.S. at 266-67). By contrast, the Ninth Circuit joined the "pattern" camp, citing Supreme Court decisions stating that "the heart of any RICO complaint is the allegation of a *pattern* of racketeering," *Agency Holding Corp. v. Malley-Duff & Assocs.*, 483 U.S. at 154 (emphasis in original), and referencing "RICO's key requirement of a pattern of racketeering," *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. at 236. *See United States v. Chao Fan Xu*, 706 F.3d at 976-77.[10]

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[10] In *United States v. Chao Fan Xu*, the Ninth Circuit upheld the domestic application of RICO to defendants' prosecution for scheming "to steal large sums of money from the Bank of China and to get away with it in the United States." 706 F. 3d at 979 (observing that immigration and bank fraud parts of pattern were inextricably linked so that without immigration fraud in United States, bank fraud in China would have been "a dangerous failure"). Thus, while defendants' "pattern of racketeering activity may have been conceived and planned overseas," the court concluded that "it was executed and perpetuated in the United States," allowing for domestic prosecution. *Id.*

Judge Lynch poses certain hypotheticals that might also support RICO's domestic application to foreign enterprises conducted through patterns of racketeering occurring wholly (or at least mainly) in this country. *See* Lynch, J., Op. Dissenting from Denial of Reh'g *En Banc*, *post* at []. But if pattern, rather than enterprise (or enterprise in relation to pattern), is RICO's focus and, thus, determinative of its application, this court should say so *en banc*. In any event, a conclusion that RICO can apply *domestically* to a pattern of racketeering occurring mostly in the United States does not ineluctably lead to a conclusion that Congress intended for RICO to apply *extraterritorially* to a

In *Norex*, this court did not choose between "enterprise" and "pattern" but, rather, considered *both* in concluding that a few predicate acts in the United States were insufficient to allow RICO to be applied domestically to a claim involving a foreign enterprise and an essentially foreign pattern of racketeering. *See* 631 F.3d at 32. But *Norex*'s treatment of the matter is so brief as to preclude a confident conclusion on the focus point. In any event, *Norex* does not specify whether enterprise and pattern should be viewed independently, conjunctively, or alternatively in determining RICO's application.[11]

Where *Norex* is not ambiguous, however, is in its rejection of predicate acts as determinative of RICO's application. This is evident from its affirmance of the dismissal of RICO claims despite allegations that domestic predicate acts were part of the pattern of racketeering. *See* 631 F.3d at 31. It is *RJR Nabisco* that confuses that point by relying exclusively on predicate acts to determine RICO's application. That approach is not only at odds with *Norex* and *Morrison*,

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foreign enterprise conducted through an entirely foreign pattern of racketeering evidenced by predicates prohibited by extraterritorially reaching statutes—Judge Lynch's third hypothetical. *See id.* at []. Certainly, that possibility warrants further careful consideration *en banc*.

[11] In its *amicus* filing, the United States urges that RICO's focus is on both the enterprise and the pattern of racketeering, so that these elements can operate in the alternative to allow RICO to apply domestically if either the enterprise or the overall pattern of racketeering operates in the United States. *See* Br. of United States 7-20. The United States does not argue in favor of the *RJR Nabisco* panel's use of individual predicate acts to determine RICO's application.

but also with our RICO jurisprudence, which as already discussed holds that the object of racketeering "is to conduct the affairs of a charged enterprise through a pattern of racketeering, not to commit discrete predicate acts." *United States v. Pizzonia*, 577 F.3d 455, 459 (2d Cir. 2009); *accord United States v. Basciano*, 599 F.3d at 205-06; *see also United States v. Russotti*, 717 F.2d at 33.

Thus, if *Morrison* does, indeed, require RICO application to be determined by reference to the statute's focus, and if discrete predicate acts are not RICO's focus, this court needs to clarify *en banc* how a court properly determines whether a RICO application is domestic or extraterritorial.

Accordingly, I respectfully dissent from the court's decision not to rehear this case *en banc* to provide needed clarity as to both (1) whether RICO applies extraterritorially, and (2) the criteria for determining whether a RICO claim is domestic or extraterritorial.

**GERARD E. LYNCH, Circuit Judge, dissenting from the denial of rehearing *en banc*:**

I join in Judge Jacobs's dissent from denial of rehearing *en banc*, because I believe that the tension between the panel's holding in this case, *European Community v. RJR Nabisco. Inc.*, 764 F.3d 129 (2d Cir. 2014), and our prior decision in *Norex Petroleum Ltd. v. Access Industries. Inc.*, 631 F.3d 29 (2d Cir. 2010), should be resolved. But I do not join the other dissenters in their criticisms of the panel's resolution. Because *en banc* review has been denied, I do not need to come to a definitive conclusion about the circumstances under which RICO reaches conduct occurring outside the United States. Largely for the

reasons explained by Judge Hall, however, I am inclined to think that the better outcome would be to adopt the view of the panel in this case and hold that RICO applies to patterns of predicate acts committed abroad where those predicate acts violate federal statutes with express extraterritorial reach.

As Judge Raggi's dissent demonstrates, the very concept of "extraterritorial application" of a complex statute such as RICO is a vexing one. *See* Raggi Dissent at 22-28. Such a question is not easily resolved by sloganeering reference to the presumption against extraterritoriality emphasized in *Morrison v. National Australia Bank. Ltd.*, 561 U.S. 247, 255 (2010). The primary prohibition in RICO, and the one at issue here, criminalizes "conduct[ing] . . . [an] enterprise's affairs . . . through a pattern of racketeering activity." 18 U.S.C.§ 1962(c). The two key elements are the "enterprise" and the "pattern of racketeering." Which, or what combination, of these elements is critical in determining whether any given application of RICO is "extraterritorial"?

Consider the following hypothetical. A leader of a revolutionary group based largely in a Middle Eastern country, in an effort to intimidate the United States to stop supporting that country's government, plots and carries out two crimes: planting a bomb near a federal office building in an American city, resulting in the deaths of several people, and beheading an abducted American journalist in the country where the group primarily operates. The terrorist leader is captured by American forces, and is indicted in the United States for violating RICO. The revolutionary group likely qualifies as an "enterprise" under the definition of that term in

18 U.S.C. § 1961(4). Both terrorist strikes qualify as one or more racketeering acts: the bombing in the United States involves arson and murder, chargeable as felonies under the law of the relevant state, *see* 18 U.S.C. § 1961(1)(A), and the murder of an American abroad is indictable under 18 U.S.C. § 2332(a)(1)—a statute that by its very terms can only be violated by acts outside the United States—which is listed as a RICO predicate under 18 U.S.C. §§ 1961(1)(G) and 2332b(g)(5)(B). Together, these acts very likely form a "pattern of racketeering activity," since they are related to each other in goals, methods, and personnel, and they exhibit continuity because the enterprise has a continuous existence that threatens to involve further such acts. *See* 18 U.S.C. § 1961(5); *H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 240-42 (1989).

Is this an "extraterritorial" application of RICO? Not an easy question. The enterprise in question is primarily foreign, in its membership, goals, and usual sphere of operation. The pattern of racketeering activity took place partially in the United States and partially abroad, though the foreign portion of the pattern involved conduct that Congress has expressly chosen to reach via the extraterritorial application of American law. Whether to characterize the hypothetical indictment as an "extraterritorial application of RICO" is an interesting conceptual question.

But the actual legal question posed by the hypothetical indictment is whether Congress intended to reach such conduct by the RICO statute, and that, as Judge Hall demonstrates, is a rather easy question to answer. *See* Hall Concurrence at 1-2. Nothing in the definition of "enterprise" excludes

foreign-based associations, groups, or corporations, and it is difficult to believe that Congress intended to exclude them. If members of a Mexican drug cartel, the Sicilian Mafia, or a foreign-based terrorist organization commit a series of violent crimes on U.S. soil that would clearly violate RICO if committed by a local drug distribution gang, a New York-based Mafia family, or the Weather Underground, after all, it would be quite odd to consider the prosecution of such acts in the United States an "extraterritorial" application of RICO, and there is certainly no reason to believe that Congress did not intend to apply RICO to such actions simply because the (entirely American) pattern of racketeering was carried out to further the goals of a foreign enterprise.

Does the outcome change if one predicate crime that formed part of the charged pattern of racketeering activity took place abroad, in violation of a statute that Congress (a) expressly gave extraterritorial reach and (b) expressly made a RICO predicate? I can't see how it does. How can Congress's enactment of a law specifically designed to protect Americans abroad, and its express incorporation of that law into RICO as a predicate crime, constitute anything other than a clear expression of congressional intent to apply RICO to persons who commit that crime, in furtherance of the affairs of an enterprise, as part of a pattern of racketeering? The plain meaning of RICO demands that result. By including certain crimes with extraterritorial application as RICO predicates — including some that can only be committed abroad — Congress unequivocally expressed its intention that RICO apply to patterns of racketeering activity that include such crimes. You may call this an

"extraterritorial" application of RICO if you like, but, whether or not the label is properly applied, there is no doubt that Congress intended to apply RICO in that situation. Nor should that conclusion change if *all* the predicate crimes alleged were committed abroad — if, for example, the revolutionary group planted no bombs on U.S. soil but carried out multiple beheadings of Americans in violation of 18 U.S.C. § 2332(a)(1). So long as Congress expressly extended its criminal prohibitions to the foreign conduct in question and incorporated those prohibitions into RICO, Congress has determined that such predicate crimes can constitute a pattern within the definition of RICO. Presumably it has done so because a pattern of such crimes strikes at American interests just as much as a pattern of terrorist acts committed in the United States by the same foreign-based enterprise.

Of course, none of this suggests an intention to apply RICO, generally, to conduct committed abroad. If members of a foreign enterprise engage in a pattern of entirely *foreign* murders and drug distribution, nothing in RICO could make that activity a crime under U.S. law. Indeed, although applying RICO to such conduct would plainly be an "extraterritorial" application of the statute, we need not even invoke the presumption against extraterritoriality to know that the application is impermissible, because the definitional provisions of RICO make clear that Congress did not define such conduct as a RICO violation. A pattern of murders of Italian citizens committed by members of an Italian organized crime group in Italy cannot violate RICO, because murder is a RICO predicate only when it is "chargeable under state law" or indictable under

specific federal statutes. *See* 18 U.S.C. §§ 1961(1)(A), 1961(1)(G). Entirely foreign activity does not qualify, and nothing in RICO indicates any contrary intent to extend its reach to foreign criminality of a similar nature to the domestic conduct covered by RICO. To the extent that *Norex* holds that RICO does not, of its own force and in general, have "extraterritorial" application in such circumstances, it is of course correct.

In that sense, indeed, RICO does not even implicate the extraterritorial ambiguities raised by most statutes. Most congressional statutes prohibit conduct in general terms that, on their face, could be taken to apply to anyone in the world. In *Morrison*, for example, the Supreme Court interpreted a provision of the Securities Exchange Act that makes it "unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange . . . [t]o use or employ, in connection with the purchase or sale of any security . . . any manipulative or deceptive device." See 15 U.S.C. § 78j(b). But we know that Congress generally does not intend, by using such broad language as "any person" or "any national securities exchange," to apply those generalized prohibitions to actions that take place outside our borders, because Congress ordinarily legislates to regulate conduct within its primary jurisdiction; that is what the presumption against extraterritorial application means. *Liu Meng-Lin v. Siemens AG*, 763 F.3d 175, 178 (2d Cir. 2014). That presumption applies to RICO as it does to other statutes, but RICO is quite explicit that its prohibitions apply only to patterns of racketeering acts that themselves violate state or

federal law. It does not, for example, say that "no person shall conduct the affairs of an enterprise through a pattern of committing murder," but confines itself to patterns of murder that are chargeable under the law of a state, or that are indictable under specific federal law. Unlike § 10(b), RICO is thus not even susceptible to a literalist reading that its general terms *might* apply to foreigners.

At the same time, however, Congress was exquisitely clear that *some* acts that are committed abroad are predicate acts under RICO, and thus can form a pattern of racketeering activity. To the extent that a pattern consisting of such acts is charged as a violation of RICO, I see nothing in the presumption against extraterritoriality that exempts that pattern from prosecution. It therefore seems to me that there is nothing novel or odd about the idea that RICO does not, in general, "apply extraterritorially," but that it may apply to acts committed abroad where those acts violate statutes that were themselves expressly stated by Congress to have extraterritorial application and that Congress has classified as RICO predicates.

In the present posture of the case, I need not address all of the issues that may arise in working out these basic principles. Nor need I decide how the instant case should be resolved, or whether *Norex* was correctly decided. I join the dissenters in believing that we would do well to convene *en banc* to resolve those very questions, and I agree with them that the reasoning and result in this case are deeply in tension with the reasoning and result in *Norex*, whether or not those two holdings are ultimately irreconcilable. To the extent, however, that the other

dissenters see the panel's approach to RICO and extraterritoriality as deeply disturbing, unprecedented, and inconsistent with *Morrison*, I respectfully disagree. To the contrary, I believe that any interpretation that suggests that operatives of a foreign enterprise cannot be held accountable under RICO for a pattern of predicate crimes that violate federal statutes with express extraterritorial reach would astonish the Congress that made such violations RICO predicates in the first place. Should the Supreme Court take up my dissenting colleagues' invitation to grant further review of this case, I hope and trust that it will not allow the context of this case — a civil action that, like many civil RICO suits, might lead some to doubt the wisdom of allowing a somewhat amorphous statute to be wielded by private interests in endlessly creative ways — to blind it to the clear intention of Congress to apply RICO to foreign terrorist groups who commit patterns of criminal acts that may occur abroad, but that violate American laws with express extraterritorial reach.

## APPENDIX E

The Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968, provides as follows:

**§ 1961. Definitions**

As used in this chapter —

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to

mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1351 (relating to fraud in foreign labor contracting), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1592 (relating to peonage, slavery, and trafficking in persons), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property

derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), sections 175-178 (relating to biological weapons), sections 229-229F (relating to chemical weapons), section 831 (relating to nuclear materials), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the

sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b(g)(5)(B);

**(2)** "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

**(3)** "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

**(4)** "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

**(5)** "pattern of racketeering activity" requires at least two acts of racketeering activity, one of

which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

**(6)** "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

**(7)** "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

**(8)** "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

**(9)** "documentary material" includes any book, paper, document, record, recording, or other material; and

**(10)** "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

**§ 1962. Prohibited Activities**

**(a)** It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his

immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

**(b)** It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

**(c)** It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

**(d)** It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

**§ 1963. Criminal Penalties**

**(a)** Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both, and shall forfeit to the United States, irrespective of any provision of State law—

(1) any interest the person has acquired or maintained in violation of section 1962;

(2) any—

(A) interest in;

(B) security of;

(C) claim against; or

(D) property or contractual right of any kind affording a source of influence over; any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section; and

(3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

The court, in imposing sentence on such person shall order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Property subject to criminal forfeiture under this section includes—

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (l) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d) (1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

(A) upon the filing of an indictment or information charging a violation of section 1962 of this chapter and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed,

removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

*Provided, however,* that an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than fourteen days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time, and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(e) Upon conviction of a person under this section, the court shall enter a judgment of forfeiture of the property to the United States and shall also authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following the entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to, or derived from, an enterprise or an interest in an enterprise which has been ordered forfeited under this section may be used to offset ordinary and necessary expenses to the enterprise which are required by law, or which are necessary to protect the interests of the United States or third parties.

(f) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with or

on behalf of the defendant be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with or on behalf of the defendant, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm or loss to him. Notwithstanding 31 U.S.C. 3302(b), the proceeds of any sale or other disposition of property forfeited under this section and any moneys forfeited shall be used to pay all proper expenses for the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs. The Attorney General shall deposit in the Treasury any amounts of such proceeds or moneys remaining after the payment of such expenses.

**(g)** With respect to property ordered forfeited under this section, the Attorney General is authorized to—

**(1)** grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this chapter;

**(2)** compromise claims arising under this section;

**(3)** award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(h) The Attorney General may promulgate regulations with respect to—

(1) making reasonable efforts to provide notice to persons who may have an interest in property ordered forfeited under this section;

(2) granting petitions for remission or mitigation of forfeiture;

(3) the restitution of property to victims of an offense petitioning for remission or mitigation of forfeiture under this chapter;

(4) the disposition by the United States of forfeited property by public sale or other commercially feasible means;

(5) the maintenance and safekeeping of any property forfeited under this section pending its disposition; and

(6) the compromise of claims arising under this chapter.

Pending the promulgation of such regulations, all provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or

alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the Customs Service or any person with respect to the disposition of property under the customs law shall be performed under this chapter by the Attorney General.

(i) Except as provided in subsection (l), no party claiming an interest in property subject to forfeiture under this section may—

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(j) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(k) In order to facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording,

or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(l)

(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

**(4)** The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

**(5)** At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

**(6)** If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

**(A)** the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

**(B)** the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the

property was subject to forfeiture under this section; the court shall amend the order of forfeiture in accordance with its determination.

**(7)** Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

**(m)** If any of the property described in subsection (a), as a result of any act or omission of the defendant—

**(1)** cannot be located upon the exercise of due diligence;

**(2)** has been transferred or sold to, or deposited with, a third party;

**(3)** has been placed beyond the jurisdiction of the court;

**(4)** has been substantially diminished in value; or

**(5)** has been commingled with other property which cannot be divided without difficulty; the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

## § 1964. Civil Remedies

**(a)** The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or

indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

**(b)** The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

**(c)** Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefore in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

**(d)** A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations

of the criminal offense in any subsequent civil proceeding brought by the United States.

**§ 1965. Venue and Process**

**(a)** Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

**(b)** In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

**(c)** In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpenas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpena shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

**(d)** All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.

**§ 1966. Expedition of Actions**

In any civil action instituted under this chapter by the United States in any district court of the United States, the Attorney General may file with the clerk of such court a certificate stating that in his opinion the case is of general public importance. A copy of that certificate shall be furnished immediately by such clerk to the chief judge or in his absence to the presiding district judge of the district in which such action is pending. Upon receipt of such copy, such judge shall designate immediately a judge of that district to hear and determine action.

**§ 1967. Evidence**

In any proceeding ancillary to or in any civil action instituted by the United States under this chapter the proceedings may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons.

**§ 1968. Civil Investigative Demand**

**(a)** Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

**(b)** Each such demand shall—

(1) state the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;

(2) describe the class or classes of documentary material produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(3) state that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(4) identify the custodian to whom such material shall be made available.

(c) No such demand shall—

(1) contain any requirement which would be held to be unreasonable if contained in a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation; or

(2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation.

(d) Service of any such demand or any petition filed under this section may be made upon a person by—

(1) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive

service of process on behalf of such person, or upon any individual person;

**(2)** delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or

**(3)** depositing such copy in the United States mail, by registered or certified mail duly addressed to such person at its principal office or place of business.

**(e)** A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

**(f)**

**(1)** The Attorney General shall designate a racketeering investigator to serve as racketeer document custodian, and such additional racketeering investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

**(2)** Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written

agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

**(3)** The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Attorney General. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Attorney General. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.

**(4)** Whenever any attorney has been designated to appear on behalf of the United States before any court or grand jury in any case or proceeding involving any alleged violation of this chapter, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so

withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.

(5) Upon the completion of—

(i) the racketeering investigation for which any documentary material was produced under this chapter, and

(ii) any case or proceeding arising from such investigation, the custodian shall return to the person who produced such material all such material other than copies thereof made by the Attorney General pursuant to this subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.

(6) When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General, to the return of all documentary material other than copies thereof made pursuant to this subsection so produced by such person.

(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for

the custody and control of such material, the Attorney General shall promptly—

(i) designate another racketeering investigator to serve as custodian thereof, and

(ii) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated. Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

**(g)** Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

**(h)** Within twenty days after the service of any such demand upon any person, or at any time before the

return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

(i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

(j) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the material so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

## APPENDIX F

## UNITED STATES DISTRICT COURT
## EASTERN DISTRICT OF NEW YORK

THE EUROPEAN COMMUNITY, acting on its own behalf and on behalf of the MEMBER STATES it has power to represent, and the Republic of Austria, Kingdom of Belgium, Republic of Bulgaria, Republic of Cyprus, Czech Republic, Kingdom of Denmark, Republic of Estonia, Republic of Finland, French Republic, Federal Republic of Germany, Hellenic Republic, Republic of Hungary, Republic of Ireland, Italian Republic, Republic of Latvia, Republic of Lithuania, Grand Duchy of Luxembourg, Republic of Malta, Kingdom of the Netherlands, Republic of Poland, Portuguese

| | |
|---|---|
| Republic, Romania, Slovak Republic, Republic of Slovenia, Kingdom of Spain, and Kingdom of Sweden, individually, | |
| Plaintiffs, | SECOND AMENDED COMPLAINT |
| - against - | Case No: CV 02-5771-Garaufis |
| RJR NABISCO, INC., R.J. REYNOLDS TOBACCO COMPANY, (a New Jersey corporation), RJR ACQUISITION CORP., f/k/a NABISCO GROUP HOLDINGS CORP., RJR NABISCO HOLDINGS CORP., R.J. REYNOLDS TOBACCO HOLDINGS, INC., R.J. REYNOLDS GLOBAL PRODUCTS, INC., REYNOLDS AMERICAN INC., and R.J. REYNOLDS TOBACCO COMPANY, (a North Carolina corporation), | |
| Defendants. | |

Plaintiffs, THE EUROPEAN COMMUNITY, acting on its own behalf and on behalf of the MEMBER STATES it has power to represent, and the Republic of Austria, Kingdom of Belgium, Republic of Bulgaria, Republic of Cyprus, Czech Republic, Kingdom of Denmark, Republic of Estonia, Republic of Finland, French Republic, Federal Republic of Germany, Hellenic Republic, Republic of Hungary, Republic of Ireland, Italian Republic, Republic of Latvia, Republic of Lithuania, Grand Duchy of Luxembourg, Republic of Malta, Kingdom of the Netherlands, Republic of Poland, Portuguese Republic, Romania, Slovak Republic, Republic of Slovenia, Kingdom of Spain, and Kingdom of Sweden, individually, (hereinafter referred to as the "MEMBER STATES" and together with THE EUROPEAN COMMUNITY, as "PLAINTIFFS"), by and through their undersigned attorneys, for their complaint against Defendants, RJR NABISCO, INC., R.J. REYNOLDS TOBACCO COMPANY (a New Jersey corporation), RJR ACQUISITION CORP., f/k/a NABISCO GROUP HOLDINGS CORP., RJR NABISCO HOLDINGS CORP., and R.J. REYNOLDS TOBACCO HOLDINGS, INC. (hereinafter referred to as the "ORIGINAL RJR DEFENDANTS"), and REYNOLDS AMERICAN INC. (RAI), R.J. REYNOLDS GLOBAL PRODUCTS, INC., and R.J. REYNOLDS TOBACCO COMPANY (a North Carolina corporation) (RJRT) (hereinafter referred to as the "RJR SUCCESSOR CORPORATIONS" or collectively with all the RJR entities, as the "REYNOLDS AMERICAN DEFENDANTS" or "RJR DEFENDANTS") and herein allege:

* * *

## I. INTRODUCTION

1. For more than a decade, the RJR DEFENDANTS have directed, managed, and controlled money-laundering operations that extended within and/or directly damaged the Plaintiffs. The RJR DEFENDANTS have engaged in and facilitated organized crime by laundering the proceeds of narcotics trafficking and other crimes. As financial institutions worldwide have largely shunned the banking business of organized crime, narcotics traffickers and others, eager to conceal their crimes and use the fruits of their crimes, have turned away from traditional banks and relied upon companies, in particular the RJR DEFENDANTS herein, to launder the proceeds of unlawful activity.

2. The RJR DEFENDANTS knowingly sell their products to organized crime, arrange for secret payments from organized crime, and launder such proceeds in the United States or offshore venues known for bank secrecy. RJR DEFENDANTS have laundered the illegal proceeds of members of Italian, Russian, and Colombian organized crime through financial institutions in New York City, including The Bank of New York, Citibank N.A., and Chase Manhattan Bank. The RJR DEFENDANTS have done business in Iraq, in violation of U.S. sanctions, in transactions that financed both Saddam Hussein's regime and terrorist groups.

3. The RJR DEFENDANTS have, at the highest corporate level, determined that it will be a part of their operating business plan to sell cigarettes as a means of laundering criminal proceeds — that is, to sell cigarettes to and through criminal organizations and to accept criminal proceeds in payment for

cigarettes by secret and surreptitious means, which under U.S. law constitutes money laundering. The officers and directors of the RJR DEFENDANTS facilitated this overarching money-laundering scheme by restructuring the corporate structure of the RJR DEFENDANTS, for example, by establishing subsidiaries in locations known for bank secrecy to direct and implement their money-laundering schemes and to avoid detection by U.S. and European law enforcement. This overarching scheme to launder criminal proceeds by selling cigarettes to criminals was implemented through many subsidiary schemes across THE EUROPEAN COMMUNITY and the United States. Examples of these subsidiary schemes are described in this Complaint and include:

(a.) Money laundering for European organized crime;

(b.) Laundering criminal proceeds in the European Community; and

(c.) Laundering criminal proceeds through Panama.

Numerous additional subsidiary schemes exist that harm THE EUROPEAN COMMUNITY and each of the MEMBER STATES named herein.

4. This civil action is based upon violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), which was specifically intended by Congress to eradicate organized crime on all fronts (including in foreign and interstate commerce) and to deprive violators of their ill-gotten gains. It is also based upon violations of standards of common law, including fraud, negligence, unjust enrichment, public nuisance (federal and state common law), and

conspiracy to commit such torts. Plaintiffs seek damages, equitable relief including disgorgement of profits, and injunctive relief: (a) to enjoin the RJR DEFENDANTS from engaging in money laundering and facilitating organized crime, and (b) to compel the RJR DEFENDANTS to adopt necessary programs and procedures to prevent such conduct in the future. Absent such relief, there will be an increased risk to national security, continued injury to Plaintiffs' business and property, and damage to the vital interests of the United States and Plaintiffs.

## II. PARTIES

5. THE EUROPEAN COMMUNITY is a governmental body created as a result of collaboration among the majority of the nations of Western Europe, more specifically, Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom. Pursuant to the Treaty establishing THE EUROPEAN COMMUNITY, as last amended by the Treaty of Nice (2001), Article 2, THE EUROPEAN COMMUNITY is vested with the responsibility "to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, . . . a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among the Member States." THE EUROPEAN COMMUNITY has certain legal rights and responsibilities. Pursuant to Article 281 of the

Treaty establishing THE EUROPEAN COMMUNITY, THE EUROPEAN COMMUNITY is a legal person. Under the Treaty, the EC can sue and be sued. Pursuant to Article 282 of the Treaty establishing THE EUROPEAN COMMUNITY, THE EUROPEAN COMMUNITY possesses the most extensive legal capacity accorded to legal persons under the laws of the Member States, and it may, in particular, acquire or dispose of property and may be a party to legal proceedings. In such instances, THE EUROPEAN COMMUNITY is represented by the European Commission. Pursuant to Article 280 of the Treaty establishing THE EUROPEAN COMMUNITY, THE EUROPEAN COMMUNITY has the duty to counter fraud and any other illegal activities affecting the financial interests of THE EUROPEAN COMMUNITY through measures which shall act as a deterrent and be such as to afford effective protection in the Member States. THE EUROPEAN COMMUNITY has a duty to protect against harm to the financial institutions and infrastructure within it. THE EUROPEAN COMMUNITY possesses additional duties and authorities that have been conferred upon it by the MEMBER STATES or that it shares with the MEMBER STATES, by virtue of treaty and/or law, including but not limited to the following: (a) the duty and authority to regulate foreign commerce; (b) the duty and authority to regulate and set rules to combat money laundering; (c) the duty and authority to prescribe regulations for the seizure of bank accounts and assets and to take other related actions to combat money laundering and other financial crimes committed against the financial interests of THE EUROPEAN COMMUNITY and the MEMBER STATES; (d) the

duty and authority to ensure and regulate the free movement of goods within THE EUROPEAN COMMUNITY; (e) the duty and authority to regulate safety and security at sea; (f) the duty and authority to regulate and take action to protect against breaches of THE EUROPEAN COMMUNITY Customs Territory or THE EUROPEAN COMMUNITY Customs Border; (g) the duty and authority to regulate ports, customs territories, free-trade zones, and customs-bonded warehouses; (h) the duty and authority to regulate transportation into THE EUROPEAN COMMUNITY or within its borders; and (i) the duty to promote throughout THE EUROPEAN COMMUNITY a harmonious, balanced, and sustainable development of economic activities and to protect and promote the economic well being of its citizens. THE EUROPEAN COMMUNITY has the general duty and the authority to act to abate any harm to itself or to the general public of THE EUROPEAN COMMUNITY within its areas of competence as set forth above. Among the legal rights of THE EUROPEAN COMMUNITY is the right to hold a legal or beneficial interest in property. THE EUROPEAN COMMUNITY is represented in the United States by a Delegation in Washington, D.C. The Delegation has full diplomatic privileges and immunities, and the Head of the Delegation is accorded full ambassadorial status.

6. Each of the MEMBER STATES named as Plaintiffs herein, Republic of Austria, Kingdom of Belgium, Republic of Bulgaria, Republic of Cyprus, Czech Republic, Kingdom of Denmark, Republic of Estonia, Republic of Finland, French Republic, Federal Republic of Germany, Hellenic Republic, Republic of Hungary, Republic of Ireland, Italian

Republic, Republic of Latvia, Republic of Lithuania, Grand Duchy of Luxembourg, Republic of Malta, Kingdom of the Netherlands, Republic of Poland, Portuguese Republic, Romania, Slovak Republic, Republic of Slovenia, Kingdom of Spain, and Kingdom of Sweden, is a sovereign State. As such, each MEMBER STATE possesses the legal capacity to acquire, own, or dispose of property and may sue and be sued. Each MEMBER STATE is a "person" as defined under the applicable U.S. law. Each MEMBER STATE has the right to hold a legal or beneficial interest in property. Many of the MEMBER STATES act in a commercial capacity in regard to cigarettes in that they now or have in the past manufactured, sold, and/or been bulk purchasers of cigarettes. As such, the illegal conduct of the RJR DEFENDANTS has directly harmed the commercial interests of the Plaintiffs and has caused them to suffer a loss of money and property. Several of the MEMBER STATES within the EUROPEAN COMMUNITY have held a constitutional monopoly on the domestic manufacture and/or sale of cigarettes. During the period relevant to this complaint, several MEMBER STATES have operated one or more cigarette manufacturing facilities within their borders. These MEMBER STATES, along with other MEMBER STATES, have sold and/or distributed cigarettes, both made by the MEMBER STATES or those which have been legally imported into the MEMBER STATE. By virtue of the aforesaid activities, these MEMBER STATES have been large sellers and, in some instances, the largest sellers and producers of cigarettes within their borders. As such, they have a very large financial stake in the tobacco business and are the most harmed by illegal

competition. As a result of the actions of the RJR DEFENDANTS as set forth more fully below, these MEMBER STATES and the EUROPEAN COMMUNITY have experienced a large reduction in their business and have lost money and property as a result.

7. Within the subject areas of their competency and jurisdiction, THE EUROPEAN COMMUNITY and each of the named MEMBER STATES are the legal entities with the duty and responsibility for enforcing the money and banking laws within their respective jurisdictions. If any entities, including the RJR DEFENDANTS, launder criminal proceeds or commit other illegal acts that violate the money and/or banking laws of the PLAINTIFFS, these PLAINTIFFS have the duty and competency to enjoin and obtain redress for such conduct.

8. RJR NABISCO, INC. was a Delaware corporation and, according to public records, maintained its principal place of business at 1301 Avenue of the Americas, New York, New York 10019-6013. Prior to August 1, 2004, RJR NABISCO, INC. was the parent corporation of R.J. REYNOLDS TOBACCO COMPANY (a New Jersey corporation) and has participated in the sale and manufacture of cigarettes and other tobacco products both individually and through its agent and instrumentality, DEFENDANT R.J. REYNOLDS TOBACCO COMPANY (a New Jersey corporation), and related entities and ventures. At all relevant times, RJR NABISCO, INC. assumed an active role in the tobacco business and treated the tobacco business as a department or division of RJR NABISCO, INC. At times pertinent to this complaint, RJR NABISCO, INC., individually and through its

agents, subsidiaries, divisions, or affiliated companies, or ventures, materially participated in the operation and management of the RJR DEFENDANTS' money-laundering enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other RJR DEFENDANTS in the unlawful and fraudulent conduct alleged herein, all of which has affected foreign and interstate commerce. Upon information and belief, based on RJR's public filings, RJR NABISCO, INC., was renamed R.J. REYNOLDS TOBACCO HOLDINGS, INC., a Delaware corporation, and was a direct, wholly owned subsidiary of RJR ACQUISITION CORP., f/k/a NABISCO GROUP HOLDINGS CORP. During relevant times herein, RJR NABISCO, INC., has conducted continuous and systematic business in the State of New York, maintains a substantial financial presence in the State of New York, utilizes offices of its own and of its affiliated corporations in New York, and is otherwise subject to the jurisdiction of the courts in the State of New York. Following the merger of July 30, 2004, discussed below, RJR NABISCO, INC. is now named R.J. REYNOLDS TOBACCO HOLDINGS, INC.

9. R.J. REYNOLDS TOBACCO COMPANY, as it existed prior to July 30, 2004, was a New Jersey corporation whose principal place of business was located at 401 North Main Street, Winston-Salem, North Carolina 27102. At times pertinent to this complaint, R.J. REYNOLDS TOBACCO COMPANY, individually and through its agents, subsidiaries, divisions, or affiliated companies or ventures, materially participated in the operation and management of the RJR DEFENDANTS' money-

laundering enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other RJR DEFENDANTS in the unlawful and fraudulent conduct alleged herein, all of which has affected foreign and interstate commerce. During relevant times herein, R.J. REYNOLDS TOBACCO COMPANY conducted continuous and systematic business in the State of New York, maintained a substantial financial presence in the State of New York, utilized offices of its own and of its affiliated corporations in New York, and is otherwise subject to the jurisdiction of the courts in the State of New York. The entity previously known as R.J. REYNOLDS TOBACCO COMPANY was absorbed as a part of the merger of July 30, 2004, and, on information and belief, is no longer an active corporation.

10. RJR NABISCO HOLDINGS CORP. was a Delaware corporation whose principal place of business was 1301 Avenue of the Americas, New York, New York 10019-6013. Prior to August 1, 2004, RJR NABISCO HOLDINGS CORP. was the parent corporation of RJR NABISCO, INC. On June 14, 1999, RJR NABISCO HOLDINGS CORP. changed its name to NABISCO GROUP HOLDINGS CORP. In 2001, NABISCO GROUP HOLDINGS CORP. changed its name to RJR ACQUISITION CORP. RJR ACQUISITION CORP., f/k/a NABISCO GROUP HOLDINGS CORP. was a Delaware corporation whose principal place of business was 7 Campus Drive, Parsippany, New Jersey 07054-0311.

11. On June 14, 1999, RJR NABISCO HOLDINGS CORP. distributed all of the common stock of its subsidiary, R.J. REYNOLDS TOBACCO HOLDINGS, INC., to the shareholders of RJR NABISCO

HOLDINGS CORP. Following the merger of July 30, 2004, RJR ACQUISITION CORP., f/k/a NABISCO GROUP HOLDINGS CORP., to the extent that it still exists, is ultimately a subsidiary of REYNOLDS AMERICAN INC.

12. R.J. REYNOLDS GLOBAL PRODUCTS, INC. was and is a Delaware corporation whose principal place of business is 401 North Main Street, Winston-Salem, North Carolina. Prior to July 30, 2004, R.J. REYNOLDS GLOBAL PRODUCTS, INC. was a subsidiary of R.J. REYNOLDS TOBACCO COMPANY. Since the merger of July 30, 2004, the Defendant, R.J. REYNOLDS GLOBAL PRODUCTS, INC., was and is a subsidiary of REYNOLDS AMERICAN INC.

13. During all relevant times, the holding corporations, identified above in paragraphs 8, 10, and 11, participated, directly and indirectly, in the sale and manufacture of cigarettes and other tobacco products through their agent and instrumentality DEFENDANT R.J. REYNOLDS TOBACCO COMPANY (a New Jersey corporation), and related entities and ventures. These holding corporations assumed an active role in the tobacco business, and at relevant times have treated the tobacco business as a department or division. At times pertinent to this complaint, these holding corporations, individually and through their agents, subsidiaries, divisions, or affiliated companies or ventures, materially participated in the operation and management of the RJR DEFENDANTS' money-laundering enterprise, and materially participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of the other RJR DEFENDANTS in the unlawful and fraudulent

conduct alleged herein, all of which has affected foreign and interstate commerce. During relevant times herein, the holding corporations, identified above in paragraphs 8, 10, and 11, conducted continuous and systematic business in the State of New York, maintained a substantial financial presence of their own and their affiliated corporations in New York, and are otherwise subject to the jurisdiction of the courts in the State of New York.

14. The ORIGINAL RJR DEFENDANTS are and were, during all relevant times, involved in directing, managing, and controlling money-laundering operations that extended within and/or directly damaged the PLAINTIFFS. At all times pertinent to this complaint, the ORIGINAL RJR DEFENDANTS, individually and through their employees, agents, joint venturers, coconspirators, subsidiaries, divisions, or affiliated companies, actively directed, managed, and controlled the ORIGINAL RJR DEFENDANTS' money-laundering enterprise, and actively participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of their coconspirators in the unlawful and fraudulent conduct alleged herein, all of which has affected and continues to affect foreign and interstate commerce in the United States.

15. The foregoing RJR corporations, as well as their affiliated entities, ventures, and successors, are and were, during all relevant times, affiliated, consolidated, combined, and unitary entities for purposes of tobacco operations and related activities. Tobacco operations were departments within the RJR corporate family. The ORIGINAL RJR DEFENDANTS maintained control of tobacco operations worldwide through a web of affiliated

entities and joint ventures. This corporate structure was an essential aspect of the ORIGINAL RJR DEFENDANTS' successful efforts to launder the proceeds of criminal activity to the detriment of the PLAINTIFFS.

16. The ORIGINAL RJR DEFENDANTS are and were, during all relevant times, responsible for the acts and omissions of their employees, for acts undertaken within the general area of their authority and for the benefit of the ORIGINAL RJR DEFENDANTS. As alleged herein, the ORIGINAL RJR DEFENDANTS were central figures in the overall conspiracy that actively embarked on and extensively participated in the fraudulent scheme. By means of corporate policies that put the ORIGINAL RJR DEFENDANTS' resources and strategy at the heart of the conspiracy, the ORIGINAL RJR DEFENDANTS were aggressor entities that acted to harm the economic interests of the Plaintiffs.

17. The ORIGINAL RJR DEFENDANTS, during relevant times, adopted a policy that purported to exercise control over the activities of their employees, as well as those of their direct and indirect subsidiaries. Under this policy, which on information and belief is monitored and enforced by RJR's Audit Committee, the ORIGINAL RJR DEFENDANTS have undertaken responsibility for the acts of the employees of the ORIGINAL RJR DEFENDANTS, wherever taken, including acts related to money-laundering activities within Europe and elsewhere which materially injured THE EUROPEAN COMMUNITY and its MEMBER STATES.

18. On or about July 30, 2004, the ORIGINAL RJR DEFENDANTS and Brown & Williamson Tobacco Corporation, (hereinafter Brown & Williamson or B&WTC) entered into a merger which resulted in the creation of several new corporate entities. This included the creation of corporate entities which had names identical to previously existing corporations. The newly created corporate entities are as described below.

19. The Defendant, REYNOLDS AMERICAN INC. (hereinafter referred to as "REYNOLDS AMERICAN" or by its New York Stock Exchange designation "RAI"), is a corporation organized and existing under the laws of the State of North Carolina, which maintains its principal place of business at 401 North Main Street, Post Office Box 2990, Winston-Salem, North Carolina 27102-2990. RAI is the parent corporation to the entity currently known as R.J. REYNOLDS TOBACCO HOLDINGS, INC. (described below and hereinafter referred to as "RJR") and acquired the assets, including the brands of Brown & Williamson Tobacco Corporation. REYNOLDS AMERICAN INC. conducts continuous and systematic business in the State of New York, maintains a substantial financial presence in the State of New York, utilizes offices of its own and of its affiliated corporations in New York, and is otherwise subject to the jurisdiction of the courts in the State of New York.

20. The Defendant, R.J. REYNOLDS TOBACCO HOLDINGS, INC. (hereinafter referred to as "RJR"), is a corporation organized and existing under the laws of the State of Delaware which maintains is principal place of business at 401 North Main Street, Post Office Box 2866, Winston-Salem, North Carolina

27102-2866. R.J. REYNOLDS TOBACCO HOLDINGS, INC. is the parent corporation of R.J. REYNOLDS TOBACCO COMPANY (a North Carolina corporation) (described below and also known as "RJRT"), a wholly owned subsidiary of REYNOLDS AMERICAN INC. RJR is the successor, by June 15, 1999, re-naming, of RJR NABISCO, INC.

21. The Defendant, R.J. REYNOLDS TOBACCO COMPANY (a North Carolina corporation) (hereinafter referred to as "REYNOLDS TOBACCO" or by its New York Stock Exchange designation "RJRT"), is a corporation organized and existing under the laws of the State of North Carolina, which maintains it principal place of business at 401 North Main Street, Winston-Salem, North Carolina 27102-2990. RJRT is a wholly owned subsidiary of R.J. REYNOLDS TOBACCO HOLDINGS, INC. (RJR), which is in turn a wholly owned subsidiary of REYNOLDS AMERICAN INC. (RAI). By virtue of the merger of July 30, 2004, RJRT is the successor in fact to the business of Brown & Williamson Tobacco Corporation and R.J. REYNOLDS TOBACCO COMPANY.

22. The functional result of the above-described merger is that the newly created entity REYNOLDS AMERICAN INC. is the parent company to the ORIGINAL RJR DEFENDANTS and the entities which conducted Brown & Williamson's tobacco business. Former stockholders in the RJR entities now own 58 percent of the stock in REYNOLDS AMERICAN INC., while Brown & Williamson Holdings, Inc. owns 42 percent of the stock of REYNOLDS AMERICAN INC. Many of the money-laundering conspiracies which are more fully described in this complaint have continued

subsequent to the merger of July 30, 2004. At the time of the merger on July 30, 2004, the Defendants REYNOLDS AMERICAN INC., R.J. TOBACCO HOLDINGS, INC., and R.J. REYNOLDS TOBACCO COMPANY (a North Carolina corporation), acquired the money-laundering enterprise of the ORIGINAL RJR DEFENDANTS. The REYNOLDS AMERICAN DEFENDANTS continue to direct, manage, and be responsible for the money-laundering enterprise of their subsidiaries, including the ORIGINAL RJR DEFENDANTS. In addition, there is a new money-laundering enterprise by virtue of the combined activities of the consolidated entity now known as REYNOLDS AMERICAN INC. In addition, the REYNOLDS AMERICAN DEFENDANTS make, ship, sell, and receive payments for traditional "Brown & Williamson-brand" cigarettes subsequent to July 30, 2004, and, as such, are liable for the illegal activities, including the receipt of criminal proceeds, associated with their activities in regard to those brands.

23. The REYNOLDS AMERICAN DEFENDANTS are and were, during all relevant times, involved in directing, managing, and controlling money-laundering operations that extended within and/or directly damaged the PLAINTIFFS. At all times pertinent to this complaint, the REYNOLDS AMERICAN DEFENDANTS , individually and through their employees, agents, joint venturers, coconspirators, subsidiaries, divisions, or affiliated companies, actively directed, managed, and controlled their money-laundering enterprises, and actively participated, conspired, assisted, encouraged, and otherwise aided and abetted one or more of their coconspirators in the unlawful and fraudulent conduct alleged herein, all of which has affected and

continues to affect foreign and interstate commerce in the United States.

24. The foregoing DEFENDANTS, as well as their affiliated entities, ventures, and successors, are and were, during all relevant times, affiliated, consolidated, combined, and unitary entities for purposes of tobacco operations and related activities. Tobacco operations were departments within the respective corporate families. The REYNOLDS AMERICAN DEFENDANTS maintained control of tobacco operations worldwide through a web of affiliated entities and joint ventures. This corporate structure was an essential aspect of their successful efforts to launder the proceeds of criminal activity to the detriment of the PLAINTIFFS.

25. The RJR DEFENDANTS are and were, during all relevant times, responsible for the acts and omissions of their employees, for acts undertaken within the general area of their authority and for the benefit of the RJR DEFENDANTS. As alleged herein, the RJR DEFENDANTS were central figures in the overall conspiracy that actively embarked on and extensively participated in the fraudulent scheme. By means of corporate policies that put the RJR DEFENDANTS' resources and strategy at the heart of the conspiracy, the RJR DEFENDANTS were and are aggressor entities that acted to harm the economic interests of the Plaintiffs.

26. The RJR DEFENDANTS, during relevant times, adopted a policy that purports to exercise control of the activities of their employees, as well as those of their direct and indirect subsidiaries. Under this policy, the RJR DEFENDANTS have undertaken responsibility for the acts of the employees of the RJR

DEFENDANTS, wherever taken, including acts related to money-laundering activities within Europe and elsewhere which materially injured THE EUROPEAN COMMUNITY and its MEMBER STATES.

## III. JURISDICTION

27. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 and 1337 because the claims of the MEMBER STATES involve allegations of illegal behavior arising under the laws of the United States, including violations of RICO and federal common law. Furthermore, jurisdiction in this Court is proper pursuant to RICO, 18 U.S.C. §§ 1964(a), (c) and 28 U.S.C. § 1651(a). The DEFENDANTS are "persons" within the meaning of 18 U.S.C. § 1961(3). As to all Plaintiffs, jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of $75,000 and involves parties of diverse citizenship. The Plaintiffs are "persons" within the meaning of 18 U.S.C. § 1961(3). Finally, this Court may exercise jurisdiction over Plaintiffs' non-federal claims pursuant to 28 U.S.C. § 1367, as this Court possesses both federal-question and diversity jurisdiction.

## IV. VENUE

28. Venue is proper in this Court pursuant to 18 U.S.C. § 1965(a) because DEFENDANTS reside, are found, have an agent, or transact affairs in this district. Venue is also proper in this Court pursuant to 18 U.S.C. § 1965(b) because, to the extent any DEFENDANT may reside outside of this district, the ends of justice require such DEFENDANT or DEFENDANTS to be brought before the Court.

Venue properly lies in this Court pursuant to 28 U.S.C. § 1391(b)(2) or, alternatively, pursuant to 28 U.S.C. § 1391(a)(2). Further, certain of the conspiratorial acts alleged herein took place within this judicial district.

## V. SCOPE

29. For purposes of this complaint, the Plaintiffs do not seek damages or equitable relief from the Defendants that (a) would result in an obligation of indemnity under the Purchase Agreement dated as of March 9, 1999, as amended and restated as of May 11, 1999, among R.J. REYNOLDS TOBACCO COMPANY, RJR NABISCO, INC. (the "Sellers") and Japan Tobacco Inc. (the "Buyer"), being owed by the Buyer to any member of the Sellers' Group (as defined in the Purchase Agreement); or (b) were released and discharged in the Release executed by THE EUROPEAN COMMUNITY and certain MEMBER STATES dated December 14, 2007. Without limitation, the Plaintiffs seek all available damages and equitable relief in regard to (i) any "RJR-brands" *other than* Camel, Doral, Dorchester, MacDonald, Magna, Maxim, Monte Carlo, More, Now, Passport, Quest, Salem, Select, Vantage, Winchester, Windsor, Winston, and any name variation of those brands; (ii) all "Brown & Williamson brands" sold by the REYNOLDS AMERICAN DEFENDANTS; (iii) all brands manufactured or sold as a result of any joint ventures between RJR and REYNOLDS AMERICAN, INC. and any other companies; and (iv) all cigarette brands, including those referred to above, for sales after December 14, 2007.

## VI. THE LINK BETWEEN THE RJR DEFENDANTS' CIGARETTE SALES, MONEY LAUNDERING, AND ORGANIZED CRIME

*Money-Laundering Links Between Europe, The United States, Russia, and Colombia*

30. Cigarette sales, money laundering, and organized crime are linked and interact on a global basis. According to Jimmy Gurule, former Undersecretary for Treasury Enforcement: "Money laundering takes place on a global scale and the Black Market Peso Exchange System, though based in the Western Hemisphere, affects business around the world. US law enforcement has detected BMPE-related transactions occurring throughout the United States, Europe, and Asia."

31. The primary source of cocaine within THE EUROPEAN COMMUNITY is Colombia. Large volumes of cocaine are transported from Colombia into THE EUROPEAN COMMUNITY and then sold illegally within THE EUROPEAN COMMUNITY and the MEMBER STATES. The proceeds of these illegal sales must be laundered in order to be useable by narcotics traffickers. For many years and continuing to the present day, a primary means by which these cocaine proceeds are laundered is through the purchase and sale of cigarettes, including those manufactured by the RJR DEFENDANTS. Cocaine sales in THE EUROPEAN COMMUNITY are facilitated through money-laundering operations in Colombia, Panama, and elsewhere, which utilize RJR DEFENDANTS' cigarettes as the money-laundering vehicle.

32. In a similar way, the primary source of heroin within THE EUROPEAN COMMUNITY is the

Middle East and, in particular, Afghanistan, with the majority of said heroin being sold by Russian organized crime, Middle Eastern criminal organizations, and terrorist groups based in the Middle East. Heroin sales in THE EUROPEAN COMMUNITY and the MEMBER STATES are facilitated and expedited by the purchase and sale of the RJR DEFENDANTS' cigarettes in money-laundering operations that begin in THE EUROPEAN COMMUNITY and the MEMBER STATES, Eastern Europe, and/or Russia, but which ultimately result in the proceeds of those money-laundering activities being deposited into the coffers of the RJR DEFENDANTS in the United States.

*Background on the Convergence of Narcotics Trafficking and Money Laundering*

33. This complaint is about Trade and Commerce or, more correctly, illegal Trade and illegal Commerce, and how money laundering facilitates the financing and movement of goods internationally. Merchants engaging in global trade often turn to the more stable global currencies for payments of goods and services purchased abroad. In many markets, the U.S. dollar is the currency of choice and, in some cases, the U.S. dollar is the only accepted form of payment. Merchants seeking dollars usually obtain them in a variety of ways, including the following three methods. Traditional merchants go to a local financial institution that can underwrite credit. Private financing is usually available for those with collateral. A third and least desirable source of dollar financing can be found in the "black markets" of the world. Black markets are the underground or parallel financial economies that exist in every country. These underground economies are

controlled by criminals and their organizations, which generally operate through "money brokers." These "money brokers" often fulfill a variety of roles not the least of which is as an important intermediate step in the laundering process, one that we will refer to throughout this complaint as the "cut out." (See paragraphs 42-45 below.)

34. The criminal activity that provides the dollars for these black-market money-laundering operations is often drug trafficking and related violent crimes. South America is the world leader in the production of cocaine, and the United States and the European Community are the world's largest cocaine markets. Likewise, Colombia and countries in the Middle East produce heroin. Cocaine and heroin are smuggled to the United States and Europe, and are sold for U.S. dollars as well as Euros and local European currencies. Russian drug smugglers obtain heroin from the Middle East and cocaine from South America and sell both drugs in large quantities in the United States and in Europe. Retail street sales of cocaine and heroin have risen dramatically over the past two decades throughout the United States and Europe. Consequently, drug traffickers routinely accumulate vast amounts of illegally obtained cash in the form of U.S. dollars in the United States and Euros in Europe. In 2002, the U.S. Customs Service estimated that illegal drug sales in the United States alone generated an estimated fifty-seven billion dollars in annual revenues, most of it in cash.

35. A drug trafficker must be able to access his profits, to pay expenses for the ongoing operation and to share in the profits; and he must be able to do this in a manner that seemingly legitimizes the origins of his wealth, so as to ward off oversight and

investigation that could result in his arrest and imprisonment and the seizure of his monies. The process by which these goals are achieved is the money-laundering cycle.

36. The purpose of the money-laundering cycle is to establish total anonymity for the participants, by passing cash drug proceeds through financial markets in a way that conceals or disguises the illegal nature, source, ownership, and/or control of the money.

*Background on Black-Market Money Exchanges*

37. Within Europe, the United States, South America, and elsewhere, a community of illegal currency exchange brokers, known to law-enforcement officials as "money brokers," operates outside the established banking system and facilitates the exchange of narcotics sale proceeds for local cash or negotiable instruments. Many of these money brokers have developed methods to bypass the banking systems and thereby avoid the scrutiny of regulatory authorities. These money brokers have different names depending on where they are located, but they all operate in a similar fashion.

38. A typical "money broker" system works this way: In a sale of Colombian cocaine in THE EUROPEAN COMMUNITY, the drug cartel exports narcotics to the MEMBER STATES where they are sold for Euros. In Colombia, the cartel contacts the money broker and negotiates a contract, in which the money broker agrees to exchange pesos he controls in Colombia for Euros that the cartel controls in Europe. The money broker pays the cartel the agreed-upon sum in pesos. The cartel contacts its cell (group) in THE EUROPEAN COMMUNITY and instructs the

cell to deliver the agreed-upon amount of Euros to the money broker's European agent. The money broker must now launder the Euros he has accumulated in THE EUROPEAN COMMUNITY. He may also need to convert the Euros into U.S. dollars because his customers may need U.S. dollars to pay companies such as the RJR DEFENDANTS for their products.

39. The money broker uses his European contacts to place the monies he purchased from the cartel into the European banking system or into a business willing to accept these proceeds (a process described in more detail below). The money broker now has a pool of narcotics-derived funds in Europe to sell to importers and others. In many instances, the narcotics trafficker who sold the drugs in THE EUROPEAN COMMUNITY is also the importer who purchased the cigarettes. Importers buy these monies from the money brokers at a substantial discount off the "official" exchange rates and use these monies to pay for shipments of items (such as cigarettes), which the importers have ordered from U.S. companies and/or their authorized European representatives, or "cut outs." The money broker uses his European contacts to send the monies to whomever the importer has specified. Often these customers utilize such monies to purchase the RJR DEFENDANTS' cigarettes in bulk and, in many instances, the money brokers have been directed to pay the RJR DEFENDANTS directly for the cigarettes purchased. The money broker makes such payments using a variety of methods, including his accounts in European financial institutions. The purchased goods are shipped to their destinations. The importer takes possession of his goods. The

money broker uses the funds derived from the importer to continue the laundering cycle.

40. In that fashion, the drug trafficker has converted his drug proceeds (which he could not previously use because they were in dollars or Euros) to local currency that he can use in his homeland as profit and to fund his operations; the European importer has obtained the necessary funds from the black-market money broker to purchase products that he might not otherwise have been able to finance (due to lack of credit, collateral, or U.S. dollars, and/or a desire for secrecy); the company selling cigarettes to the importer has received payment on delivered product in its currency of choice, regardless of the source of the funds; and the money broker has made a profit charging both the cartel and the importer for his services. This cycle continues until the criminals involved are arrested and a new cycle begins. Money laundering is a series of such events, all connected and never stopping until at least one link in the chain of events is broken.

41. Many narcotics traffickers who sell drugs in THE EUROPEAN COMMUNITY now also purchase and import cigarettes. In particular, as the trade in cigarettes becomes more profitable and carries lesser criminal penalties compared to narcotics trafficking, the "business end" of selling the cigarettes has become at least as attractive and important to the criminal as the narcotics trafficking. Finally, it makes no difference whatsoever to the money-laundering system whether the goods are imported and distributed legally or illegally. Regardless of whether he sells his cigarettes legally or illegally, the narcotics trafficker has achieved his goal in that he has been able to disguise the nature, location, true

source, ownership, and/or control of his narcotics proceeds. At the same time, the cigarette manufacturer has achieved its goal because it has successfully sold its product in a highly profitable way.

*Background on Money Laundering: The "Cut-Out" Strategy*

42. There are numerous important steps in any money-laundering cycle. "Dirty" money of necessity moves in a way that is specifically designed to conceal or disguise its nature, source, ownership, and/or control. Successful "layering" of "dirty" transactions often will involve intermediaries, like money brokers, as a matter of necessity and convenience. These "money brokers" play an important role in the laundering conspiracy. They serve to isolate relevant coconspirators from the overt criminal acts, and because of that they are often referred to by law-enforcement agencies as "cut outs." The "cut out" is purposefully inserted into the transaction to create a layer of activity between the overt criminal actors and those receiving the laundered proceeds or profits of the criminal scheme. The "cut out's" role is to shield the true participants in the conspiracy from discovery.

43. In this money-laundering conspiracy, the RJR DEFENDANTS' role will often be masked by the activities of the "cut outs." Consequently, the "cut-out" strategy will be referred to often throughout this complaint. The "cut-out" strategy is also relevant to the sales and marketing end of the international cigarette export cycle. When a cigarette manufacturer intentionally sells its products into criminal distribution channels via carefully selected

wholesalers, so that it can deny responsibility for "where the customer sells the product," the manufacturer is using that wholesaler as a "cut out" to insulate itself from the overt acts involved in the sale of cigarettes as a means of supporting the money-laundering cycle.

44. The cut-out strategy benefits the manufacturers looking to increase market share and those merchants looking to conceal their involvement in legal or illegal business activity. This process develops an unfair business strategy for the manufacturer, which increases its market share by creating a competitive disadvantage. By operating outside the legal framework for fair business operations, the manufacturer creates an unfair advantage for itself as against its competitors in virtually all aspects of business activity, including profit margins, financing terms, price structures, shipping, storage, advertising, regulation (e.g., in the case of cigarettes, health warnings), reporting obligations, and other aspects of business strategy. The resulting "competitive disadvantage" is particularly onerous to domestic companies that must comply with an array of regulations ranging from the sourcing of raw materials to laws governing treatment of their employees. Consequently, domestic manufacturers in THE EUROPEAN COMMUNITY (both state owned and privately owned) are particularly harmed by the cut-out strategy.

45. As will become clear from the RJR DEFENDANTS' use of Giovannex, UETA, and many others, the "cut out" was an integral part of the RJR DEFENDANTS' direction of and participation in this international money-laundering conspiracy.

## VII. THE DEVELOPMENT OF THE MONEY-LAUNDERING ENTERPRISES

46. The RJR DEFENDANTS have been aware of organized crime's involvement in the distribution of their products. On January 4, 1978, the Tobacco Institute's Committee of Counsel met in New York City. The Committee of Counsel was the high tribunal that set the tobacco industry's legal, political, and public relations strategy for more than three decades. The January 4, 1978, meeting was called to discuss, among other things, published reports concerning organized crime's involvement in the tobacco trade and the tobacco industry's complicity therein. The published reports detailed the role of organized crime in the tobacco trade (including the Colombo crime family in New York), and the illegal trade at the Canadian border and elsewhere. RJR's general counsel, Max Crohn, attended and participated in the meeting. The large cigarette manufacturers were present at the meeting and/or represented by counsel. The Committee of Counsel took no action to address, investigate, or end the role of organized crime in the tobacco business. Instead, the Committee agreed to formulate a joint plan of action to protect the industry from scrutiny of the U.S. Congress. Notice and the agenda for the meeting, and the minutes of the meeting, were transmitted by the use of the U.S. mails.

47. From June 1999 through August 1, 2004, and continuing to the present day, the RJR DEFENDANTS have undertaken extensive efforts to increase their market share and to expand the sales of their products throughout the world. To accomplish this end, the RJR DEFENDANTS have actively engaged in the sale of their products to

criminals and/or criminal organizations, which can purchase goods with their criminal proceeds only if the payments for those goods are made covertly so as to avoid detection by law enforcement. The RJR DEFENDANTS engaged in such conduct through illegal acts, including money laundering, wire fraud, mail fraud, and other violations of U.S. law. The RJR DEFENDANTS have controlled, directed, encouraged, supported, and facilitated the activities of the criminals who purchase their products. The RJR DEFENDANTS have collaborated with criminals, directly and indirectly, and have sold cigarettes to persons and entities that they know or had reason to know were laundering criminal proceeds through the purchase of cigarettes.

48. By engaging in this illegal conduct the RJR DEFENDANTS have achieved multiple benefits for themselves, including but not limited to the following:

(a.) The RJR DEFENDANTS have increased their cigarette sales because they have new and additional customers, namely, the money launderers and the criminal organizations they service.

(b.) The RJR DEFENDANTS have increased their profit margins because they require the criminals to pay a premium for their cigarettes and/or subject the criminals to sales and credit terms that are more favorable to the RJR DEFENDANTS than those granted to legitimate customers.

(c.) The RJR DEFENDANTS have increased their market share by adding to their customer base to the detriment of their competitors.

(d.) The RJR DEFENDANTS have enhanced the market value of their tobacco

operations, while decreasing the market value of their competitors' operations.

49. The RJR DEFENDANTS, jointly and as individual corporations, control, direct, encourage, support, promote, and facilitate criminal activities that harm THE EUROPEAN COMMUNITY in a variety of ways, including but not limited to the following:

(a.) The RJR DEFENDANTS developed mechanisms and procedures, including the use of cut outs, to allow their criminal customers to pay them for cigarettes in ways that could not be detected by U.S. and European law enforcement. In most instances, the RJR DEFENDANTS mandate that their criminal clients utilize these procedures to ensure that the RJR DEFENDANTS' role in these money-laundering activities will remain undetected.

(b.) The RJR DEFENDANTS accept payments from persons or entities they know, or have reason to know, are criminals and money launderers, and/or from distributors that they know, or have reason to know, are selling cigarettes to criminals and money launderers.

(c.) The RJR DEFENDANTS make arrangements by which the cigarettes they sell can be paid for in such a way that the payments are virtually untraceable.

(d.) The RJR DEFENDANTS make arrangements for payments for their cigarettes to be made into foreign accounts in an attempt to improperly utilize the banking and privacy laws of foreign governments as a shield to protect the criminals from government investigations concerning their activities.

(e.) The RJR DEFENDANTS agree to receive payment for cigarettes by way of third-party checks and other forms of payment executed by persons who have no relationship to the transaction other than that they have provided the funds. Such persons are a common part of money-laundering schemes. Payments for cigarettes by such third-party persons are a clear indication of money-laundering activity.

(f.) The RJR DEFENDANTS established protocols for "layered transactions" that allowed for payment for cigarettes to be made through multiple intermediaries (cut outs) to conceal the ultimate source and nature of the illicit funds.

(g.) The RJR DEFENDANTS invoiced distributors and intermediaries (cut outs) for cigarettes that were sold to criminal customers to conceal the fact that these sales were being made to criminals. In fact, however, the intermediaries and distributors were never expected to pay for the invoiced cigarettes and, at most, would act as pass-through accounts by which the criminals paid the RJR DEFENDANTS for cigarettes.

(h.) The RJR DEFENDANTS generate false or misleading invoices, bills of lading, shipping documents, and other documents that expedite the process by which the cigarettes are secretly delivered to criminals.

(i.) The RJR DEFENDANTS approve their criminal customers on an expedited basis and do not require them to go through the formalities required of legitimate customers.

(j.) The RJR DEFENDANTS engage in a pattern of activity by which they ship cigarettes

designated for one port knowing that the cigarettes in fact will be diverted to another port to be sold illegally and/or in violation of U.S. laws and embargoes.

(k.) The RJR DEFENDANTS have formed, financed, and directed the activities of industry groups to disseminate false and misleading information to Plaintiffs and the public to conceal their illegal activities.

(l.) The RJR DEFENDANTS controlled, directed, encouraged, supported, and facilitated cigarette sales by and to criminals by giving instructions to distributors, shippers, shipping companies, retailers, and/or various other intermediaries so as to effectuate the sale of large amounts of cigarettes by and to criminal organizations.

50. But for the involvement and active assistance of the RJR DEFENDANTS, money launderers and criminals could not have laundered the proceeds of their criminal activities and continued such activities at such levels to the detriment of THE EUROPEAN COMMUNITY and the MEMBER STATES. The members of this vertical group, consisting of the RJR DEFENDANTS, the distributors, the shippers, the criminal customers, currency brokers, and the RJR DEFENDANTS' agents and subsidiaries who receive payment for the cigarettes, work together for the common purpose of depriving Plaintiffs of money and property and engaging in a course of conduct to gain massive profits from the sale of cigarettes as a part of a global money-laundering enterprise while harming Plaintiffs' economic interests. The activities of this core group constitute a conspiracy in law and in fact.

## VIII. THE RJR DEFENDANTS' DIRECT INVOLVEMENT IN MONEY LAUNDERING

51. The RJR DEFENDANTS have been actively involved in money laundering for many years, and have carried out their scheme through acts within this district and throughout the State of New York. Examples of the methods and means by which the RJR DEFENDANTS have been complicit in the money-laundering scheme, directly and through the acts of their coconspirators, are set forth below.

*RJR's Relationships with Money Launderers*

52. The RJR DEFENDANTS have solicited contacts with companies and individuals in Europe, Central America, and the Caribbean that the RJR DEFENDANTS knew, or had reason to know, were money launderers. In approximately 2002, RJR began engaging in a series of acquisitions and joint ventures which caused RJR to enter the international market. At that time, RJR engaged in money-laundering activities. Said money-laundering activities have occurred and continue to occur up to and through the date of this complaint.

53. In light of the dramatic increase of narcotics sales in THE EUROPEAN COMMUNITY in the 2000s, narcotics traffickers and money launderers in THE EUROPEAN COMMUNITY increasingly needed to launder enormous volumes of cash and/or convert their cash from one form of currency to another. The RJR DEFENDANTS wished to increase their market share in certain target markets including THE EUROPEAN COMMUNITY by obtaining additional customers for their product on whom they could rely to sell the cigarettes in the markets targeted by the RJR DEFENDANTS. In

general, it was immaterial to the RJR DEFENDANTS whether the cigarettes were sold legally or illegally, so long as the cigarettes were sold in the target markets. Accordingly, the RJR DEFENDANTS reached an agreement with their coconspirators, the narcotics traffickers and money launderers, that the RJR DEFENDANTS would provide these criminals with the capability to launder the proceeds of their criminal activities, including narcotics trafficking, by purchasing the RJR DEFENDANTS' tobacco products. The RJR DEFENDANTS arranged for secret delivery of the cigarettes and secret means by which the coconspirators could pay for the cigarettes, an essential component of the money-laundering scheme. In return, the narcotics traffickers and money launderers agreed to sell the products in the markets targeted by the RJR DEFENDANTS and sold the cigarettes under the instructions of the RJR DEFENDANTS. In this way, the proceeds of enormous amounts of Colombian cocaine money and Russian heroin money derived from narcotics sales in the United States and THE EUROPEAN COMMUNITY, as well as the proceeds of other crimes, were laundered through the purchase and sale of the RJR DEFENDANTS' products.

54. The RJR DEFENDANTS had a well-established relationship with distributors in Panama, the Caribbean, Eastern Europe, and elsewhere who were well situated to develop and exploit relationships with criminal individuals and organizations. The RJR DEFENDANTS directly and indirectly encouraged their distributors to solicit and/or expand their relationships with customers who were purchasing the cigarettes largely for the

purpose of laundering criminal proceeds. Said practice continues to the present date.

55. The RJR DEFENDANTS entered into agreements and understandings with money launderers and narcotics traffickers in Europe, Russia, and South America to meet the business needs of the RJR DEFENDANTS and their coconspirators. Communications with or on behalf of these individuals were accomplished through a regular use of the U.S. wires and mails.

*The RJR Defendants' Direction and Control of the Money-Laundering Scheme*

56. The RJR DEFENDANTS controlled every aspect of the financial transactions involving the purchase of their cigarettes. The RJR DEFENDANTS set either favorable or unfavorable financing terms for their customers as a means to reward, punish, and/or control the customers. The RJR DEFENDANTS also controlled the exact methods and means by which the RJR DEFENDANTS were paid for the cigarettes. In this way, the RJR DEFENDANTS structured their payment schemes to maximize their own security from detection by U.S. and European law enforcement.

57. In addition to establishing the rules by which the RJR DEFENDANTS would be paid by cash, Brady Bonds, secret payments to offshore accounts, or other means as described more fully below, the RJR DEFENDANTS also dictated that their criminal customers route payments to the RJR DEFENDANTS through intermediary distributors, shippers, and other cut outs. This procedure, known in money-laundering jargon as "layering," is

conducted for the sole purpose of concealing the payments' true source from THE EUROPEAN COMMUNITY and U.S. law enforcement.

58. In the 2000s, at key distribution points in the European Community, the RJR DEFENDANTS utilized certain companies to handle and sell their products. These companies maintained lists of "direct customers of RJR" which included special handling instructions for shipments designated for RJR customers that the RJR DEFENDANTS knew were involved in criminal activities. These special instructions, directed by the RJR DEFENDANTS, were intended to conceal the true purchaser of the cigarettes and/or the RJR DEFENDANTS' relationship with these special customers. These "direct customer" lists clearly demonstrated that the RJR DEFENDANTS knew that they were selling to criminal customers and thereby demonstrated that the RJR DEFENDANTS knew that they were receiving criminal proceeds in payment for their products.

*Cigarette Sales to Launder Narcotics Proceeds*

59. The sale of cigarettes has become one of the primary vehicles by which drug traffickers launder their illicit profits. The RJR DEFENDANTS have become a prime recipient of this business. Money brokers routinely purchase large volumes of RJR cigarettes with money that represents the proceeds of illicit drug sales. Representatives of the RJR DEFENDANTS know or should know the source of these funds and their illicit nature, yet the RJR DEFENDANTS continue to receive these funds and to sell cigarettes to these persons and entities.

60. Sales of RJR cigarettes have enabled drug lords to launder their illicit profits. Representatives of the RJR DEFENDANTS are on actual notice that the source of funds used to purchase their cigarettes is drug trafficking, yet the RJR DEFENDANTS continue to receive these funds and to sell cigarettes to these persons and their affiliates. By reason of this conduct, the RJR DEFENDANTS aid, abet, and act in concert with drug lords to launder their ill-gotten gains.

61. The RJR DEFENDANTS have long been on notice that their cigarette sales are linked to money laundering. In or about 1994, the National Coalition Against Crime and Tobacco Contraband, which was funded by RJR and other tobacco companies, retained Lindquist Avey Macdonald Baskerville Inc. ("Lindquist") to investigate and analyze illegal activity involving cigarettes in the United States, among other things. In its August 15, 1994, report, Lindquist observed that: "There are indications that some Colombian cocaine barons still handle cigarettes, but for a different purpose. It is believed that, in some cases, they patriate cocaine profits earned in the United States through cigarette purchases. These cigarettes are imported into Colombia and sold there, providing cocaine traffickers with a seemingly legal alibi for the source of their wealth."

62. That the RJR DEFENDANTS should have known that their distributors were laundering drug proceeds is undeniable. In or about the early 1990s, bank accounts in Miami, Florida, owned by various RJR cigarette distributors, were frozen by U.S. law-enforcement officials because funds credited to those accounts represented laundered drug money. The

freezing of these accounts was well known to the RJR DEFENDANTS. By virtue of this event, the RJR DEFENDANTS were aware or should have been aware that their distributors had been involved in handling laundered narcotics proceeds. In spite of the fact that the conduct of these individuals was known to the RJR DEFENDANTS, the RJR DEFENDANTS continued to develop these relationships actively so as to sell large volumes of cigarettes to these money launderers.

*Money Laundering through Central America and the Caribbean*

63. Agents and employees of the RJR DEFENDANTS established direct relationships with individuals in Europe, Central America, and the Caribbean who they knew, or should have known, were actively involved in laundering the proceeds of illicit narcotics sales. Executives and employees of the RJR DEFENDANTS traveled to Europe, the Caribbean, and to Central America on multiple occasions for the purpose of meeting and negotiating business agreements with individuals who the RJR DEFENDANTS knew, or should have known, were involved in the laundering of narcotics proceeds. This travel was routinely arranged through the use of the U.S. wires and mails.

64. The development of these relationships with known money launderers was known or should have been known by all the ORIGINAL RJR DEFENDANTS and in particular RJR NABISCO, INC. and R.J. REYNOLDS TOBACCO COMPANY.

*Money Laundering through Panama*

65. The RJR DEFENDANTS knowingly and intentionally shipped large volumes of cigarettes to

individuals and corporations in certain free-trade zones such as the Colon Free Trade Zone in Panama for the purpose of expediting the money-laundering scheme.

66. Even as to cigarettes whose ultimate destination was nowhere near Panama, the RJR DEFENDANTS shipped cigarettes through cut outs in Panama so that the money launderers could use the secrecy laws of the Republic of Panama as a shield by which to prevent law-enforcement agencies and governments from identifying the true purchasers of the cigarettes. This trade allowed for the movement of laundered money out of Europe without detection. The RJR DEFENDANTS endeavored to conceal the sale of their products into money-laundering channels by transferring the cigarettes to several cut outs in several destinations prior to the ultimate delivery to the final customer and by providing secret and circuitous means by which the cigarettes were paid for.

*Distinctions between Sales to Legitimate Customers and Sales to Criminal Customers*

67. The RJR DEFENDANTS utilized different business practices depending on whether their customer was a legitimate business customer or a criminal business customer. Criminal customers were handled differently because they represented a greater risk. Specifically, the RJR DEFENDANTS faced a risk that the products intended for criminal customers might be confiscated or the customers arrested. Additionally, the RJR DEFENDANTS took steps to conceal from law-enforcement authorities their relationship with these criminal customers so as to prevent law-enforcement authorities from

becoming aware that the RJR DEFENDANTS were laundering criminal proceeds.

68. Cigarette sales to a legitimate customer can be identified by the following characteristics:

(a.) Customers placed orders directly to the RJR DEFENDANTS through the use of purchase orders. Purchase orders could be communicated by telephone or fax.

(b.) The purchase orders were processed and serviced by warehouses contracted by the RJR DEFENDANTS.

(c.) The wholesaler of the cigarettes was responsible for complying with all applicable laws and the payment of applicable taxes.

(d.) Legitimate customers were usually provided with credit terms. Because credit was being extended, the approval process for a new customer could take a substantial amount of time.

(e.) Legitimate customers routinely make payments directly to the RJR DEFENDANTS via wire transfers.

(f.) Cigarettes purchased by legitimate customers were typically produced and shipped from a single source.

69. In contrast, when the RJR DEFENDANTS sold cigarettes to criminal customers, the procedure often was as follows:

(a.) The customers could not place orders directly to the RJR DEFENDANTS; orders had to be placed with some intermediary company (a cut out).

(b.) If the cigarettes passed through a Free Trade Zone, the customer, not the RJR

DEFENDANTS, coordinated the shipment and transportation instructions with the Free Trade Zone.

(c.) The customer was deemed "responsible" for compliance with applicable law regarding the sale of the cigarettes.

(d.) Sales were often for cash only; no credit or credit terms highly favorable to the RJR DEFENDANTS were offered.

(e.) The RJR DEFENDANTS approved such sales almost immediately without any attempt to "know the customer." In fact, the RJR DEFENDANTS make it a point to not develop a knowledge of the customer so they would not have to admit that they were aware of the customer's criminal activities. Formal applications and waiting periods for approval that were the standard in the industry were circumvented.

(f.) The RJR DEFENDANTS accepted payment by checks payable to intermediary companies, third-party checks, bank checks, third-party wire transfers, and other forms of payment that were not typical in the cigarette trade. Payments often had to be made through "cut outs" to hide or disguise the true nature of the transaction and the participants.

(g.) On some occasions, payments were made directly to the account of an RJR subsidiary in the Caribbean. However, in such instances, those payments were directed to be sent to a numbered account and did not name the RJR DEFENDANTS in the payment details.

(h.) The RJR DEFENDANTS continually switched the banks where payments were to be made to the RJR DEFENDANTS in order to escape

detection by U.S. law enforcement. This process was known within the RJR DEFENDANTS as "musical banks."

(i.) The RJR DEFENDANTS engaged in "dual sourcing," a practice in which cigarettes were sourced from multiple locations or transferred through circuitous and indirect shipping routes to conceal the true customer.

*Money-Laundering Mechanisms*
*Laundering of Cash*

70. The way in which the RJR DEFENDANTS laundered narcotics proceeds and the proceeds of other forms of criminal activity evolved. Many of the money-laundering operations were simple and overt, involving meetings between RJR employees and known money launderers in which the RJR employees would receive large volumes of cash in payment for cigarettes, or would be present when these transactions took place.

71. For example, it was virtually a monthly routine that employees of the RJR DEFENDANTS would travel from the US to Colombia by way of Venezuela. These employees, traveling with authorized RJR distributors, would enter Colombia illegally, paying bribes to guards at the Colombian border so that they could enter the country without their passports being stamped. They would then travel by car to various locations such as Maicao where they would meet face to face with money launderers and narcotics traffickers. There the RJR employees would receive payments for cigarettes in the form of bulk cash that may be denominated in U.S. dollars or Venezuelan bolivars. They would also receive easily transferable instruments such as third-

party checks, cashier's checks, and other such instruments. The employees of the RJR DEFENDANTS would then travel back to Venezuela, bribing border guards at the Venezuelan border to ensure that they could move the cash illegally across the border into Venezuela. Once the employees of the RJR DEFENDANTS reached a major Venezuelan city such as Maracaibo they would, by direct or indirect means, wire transfer the funds to bank accounts of the RJR DEFENDANTS in the United States, thereby completing the money-laundering cycle.

72. Throughout this process, the RJR DEFENDANTS and their employees were well aware that they were laundering the proceeds of criminal activities. The great lengths that were taken to conduct these activities in a surreptitious manner demonstrate the knowledge of the RJR DEFENDANTS that these activities were illegal. The process by which these illegal payments were made, received, transported, and laundered was established by high-level executives of the RJR DEFENDANTS. This money-laundering operation could not have occurred without the knowledge and complicity of officers and managers of the RJR DEFENDANTS. The above-described travel was arranged through the use of the U.S. wires and mails and the laundered narcotics proceeds were transferred to the bank accounts of the RJR DEFENDANTS through the U.S. wires and mails.

*Money Laundering through Brady Bonds*

73. At another time, to avoid the transportation of bulk cash and to conceal further the illegal nature of their transactions, the RJR DEFENDANTS

laundered the proceeds of criminal activities through the use of Brady Bonds. Brady Bonds, named after former United States Secretary of the Treasury Nicholas Brady, were created in association with the IMF and the World Bank as part of an effort to restructure outstanding sovereign loans into liquid debt instruments. Brady Bonds were coupon-bearing bonds for which the principal and interest were collateralized by United States Treasury zero-coupon bonds and other high-grade instruments. Creditor banks exchanged sovereign loans for Brady Bonds incorporating principal and interest guarantees as a means by which debtor governments could have their debts reduced. Issued as registered and/or bearer bonds, Brady Bonds were utilized to restructure the debt in a number of countries, including Venezuela. Brady Bonds are transferable and can be bought and sold through various exchanges.

74. As an example of how Brady Bonds were used to launder narcotics proceeds, employees and/or distributors of the RJR DEFENDANTS traveled to locations such as Maicao, Colombia, to receive payment for cigarettes by cash, check, or money order. Often these payments were made in Venezuelan bolivars, not the preferred currency for the RJR DEFENDANTS. To convert these bolivars into U.S. dollars, the RJR DEFENDANTS and/or their distributors would transport the cash, checks, or money orders to a major city in Venezuela. At that point, they would use the funds in question to purchase Brady Bonds. Once the Brady Bonds were purchased, they would be transferred to an exchange in New York City where they would then be sold for dollars. In this way, the RJR DEFENDANTS could launder the proceeds of criminal activities, convert

the proceeds into U.S. dollars, and deliver them to their bank accounts in New York without detection from law enforcement. The purchase, movement, and sale of the Brady Bonds were expedited through the United States wires and/or mails.

*Illegal Sales into Iraq through the European Community*

75. In 2001 and 2002, the RJR DEFENDANTS produced and sold new brands of cigarettes that apparently were designed for the Iraqi/Middle East market. Two such brands were Easton and Barton. These cigarette brands, although virtually unknown in the West and unidentified in the RJR DEFENDANTS' annual report, were manufactured by the RJR DEFENDANTS in North Carolina for sale into Iraq.

76. The Easton brand name is purportedly owned by a company known as GMB Inc. located at 401 North Main Street, Winston-Salem, North Carolina. This address is also the address for the corporate offices of the RJR DEFENDANTS. Although GMB Inc. ostensibly owns the brand-name rights to Easton cigarettes, the cigarettes themselves were manufactured by the RJR DEFENDANTS. Easton-brand cigarettes made in the United States were labeled in part: "Manufactured by RJ Reynolds Tobacco Co., Winston-Salem, NC USA exclusively for A.T.C. . . . Made in USA." The Barton Light cigarettes made in the United States were labeled in part: "Manufactured by RJ Reynolds Tobacco Co., Winston-Salem, NC USA. exclusively for A.T.C. . . . Made in USA."

77. The Barton- and Easton-brand cigarettes were sold through the RJR DEFENDANTS' distribution

network into Iraq. Shipments of Easton- and Barton-brand cigarettes, manufactured by the RJR DEFENDANTS, were sold illegally into Iraq as recently as April 2002. Shipments of Barton- and Easton-brand cigarettes were accompanied by promotional materials, including hats, cigarette lighters, key rings, and matches.

78. Examples of illegal shipments of cigarettes into Iraq between January and April 2002 includes:

| | | |
|---|---|---|
| Barton | 4,500 master cases | (10,000 cigarettes per master case) |
| Easton | 1,560 master cases. | |

Shipments into Iraq on March 2, 2002, March 23, 2002, March 31, 2002, April 6, 2002, and April 11, 2002, included advertising and promotional materials for the cigarettes.

79. In many instances, the cigarettes in question, even when ostensibly in the possession of the distributor, remained titled to the RJR DEFENDANTS. Thus, the RJR DEFENDANTS maintained control over the shipping, handling, and ultimate delivery of the cigarettes up to and including the time the cigarettes entered Iraq. The aforesaid scheme was accomplished through a continuing use of the U.S. wires and/or mails.

*The RJR Defendants and Terrorist Organizations*

80. Substantial portions of the cigarettes sold into Iraq were sold to or for the benefit of various terrorist groups, including the PKK (Kurdistan Workers' Party). From June 1999 and up to and including 2002, the RJR DEFENDANTS and their coconspirators sold cigarettes into Iraq by way of the northern territories of Iraq, including the towns of

Dohuk and Zokho. This region is wholly or partially controlled by terrorist groups, including the PKK. The PKK and similar terrorist groups charge a fee for every container of cigarettes that is allowed to pass through their territory. These fees have been paid to the PKK by the RJR DEFENDANTS' coconspirators. Consequently, the RJR DEFENDANTS and their coconspirators have provided direct financial benefits to the PKK and other terrorist groups. Although the regime of Saddam Hussein was often at odds with Kurdish groups in Northern Iraq, the illegal cigarette trade was so lucrative to Saddam Hussein and his family that they allowed several Kurdish groups to import these cigarettes. Saddam Hussein's son Uday Hussein oversaw and personally profited from the illegal importation of cigarettes into Iraq. This racketeering scheme harmed U.S. and EUROPEAN COMMUNITY interests. On May 18, 2004, the United States Department of the Treasury took action to freeze the assets of Uday Hussein's key financial lieutenants in the organized crime enterprise, including (i) Roodi Slewa, who received millions of dollars from the cigarette distributors and paid Uday Hussein approximately $1.5 million per month from the proceeds of this racketeering scheme; and (ii) Nabil Victor Karam, who played a key role in Uday Hussein's racketeering activities in addition to serving as the director of Trading and Transport Services and Alfa Company Limited for International Trading and Marketing, two companies that managed many of Uday Hussein's illegal enterprises.

81. On October 8, 1999, Secretary of State Madeleine K. Albright designated the PKK as a "Foreign Terrorist Organization" (FTO) pursuant to the Antiterrorism and Effective Death Penalty Act of

1996, Pub. L. No. 104-132, § 302, 110 Stat. 1214, 1248 (1996), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996). As a result of this action, it became illegal for a person in the United States or subject to the jurisdiction of the United States to provide funds or other material support to a designated FTO. On May 10, 2001, Secretary of State Colin L. Powell reaffirmed the designation of the PKK as an FTO on the ground that it has "continued to plan and prepare for possible acts of terrorism."

82. The designation of the PKK as an FTO is consistent with its activities over the course of the past three decades. The PKK was established in the 1970s as a Marxist-Leninist insurgent group primarily composed of Turkish Kurds. In recent years, it has moved beyond rural-based insurgent activities to include urban terrorism. It seeks to establish an independent Kurdish state in southeastern Turkey, where the population is predominantly Kurdish. The PKK's primary targets are the Turkish Government security force in Turkey, but it has also been active in THE EUROPEAN COMMUNITY against Turkish targets. The PKK conducted attacks on Turkish diplomatic and commercial facilities in dozens of Western European cities in 1993 and again in spring 1995. In an attempt to damage Turkey's tourism industry, the PKK has bombed tourist sites and hotels and kidnapped foreign tourists. PKK members in Europe have been involved in the wholesale and retail distribution of heroin and other criminal activities to finance their operations, including the purchase of arms. The PKK has received aid and comfort from

Syria, Iraq, and Iran. On May 24, 2006, affiliates of the PKK claimed responsibility for setting fire to the airport in Istanbul, Turkey, along with at least eight other bombings in Istanbul in 2006. Said bombings have a direct and adverse impact on both the United States and the EUROPEAN COMMUNITY.

83. The PKK has had a particularly adverse affect on THE EUROPEAN COMMUNITY. The PKK has launched numerous terrorist attacks within THE EUROPEAN COMMUNITY. Additionally, the PKK is known to commit an array of other criminal offenses within THE EUROPEAN COMMUNITY, including heroin trafficking and weapons trafficking. Accordingly, the acts of the RJR DEFENDANTS have proximately and directly injured and continue to injure THE EUROPEAN COMMUNITY because the RJR DEFENDANTS' activities enabled the PKK to engage in narcotics trafficking, weapons trafficking, and terrorist activities that occurred within and to the detriment of THE EUROPEAN COMMUNITY and the MEMBER STATES. In April 2002, THE EUROPEAN COMMUNITY declared the PKK a terrorist group.

*Travel and Entertainment by RJR Employees*

84. To advance the money-laundering schemes set forth above, the employees, executives, and managers of the RJR DEFENDANTS often traveled extensively, both to supervise the schemes and also to entertain the RJR DEFENDANTS' criminal customers. RJR executives traveled from the United States to Europe and South America to meet with, entertain, and maintain relations with RJR's criminal customers. RJR executives and managers who engaged in such travel and entertainment often received large travel

and entertainment budgets from the RJR DEFENDANTS. Some RJR executives received travel and entertainment budgets of up to one million dollars per year for the purpose of advancing the RJR DEFENDANTS' illicit activities in this fashion.

*RJR's Efforts to Deceive the Plaintiffs*

85. On many occasions over the past decade, government departments of the MEMBER STATES have requested that the RJR DEFENDANTS inspect seized cigarettes to determine whether they were legitimate product and the party to whom the cigarettes were sold. Almost invariably, the RJR DEFENDANTS have indicated that they are unable to determine to whom the product was sold. This was true even as to products that the RJR DEFENDANTS admitted were produced by them.

86. The representations by the RJR DEFENDANTS that they could not identify the customers to whom the products were sold were false and fraudulent. The cigarettes in question contained markings that allow the RJR DEFENDANTS to identify at a minimum the first and second purchasers of the cigarettes. The RJR DEFENDANTS deceived the Plaintiffs and refused to provide this information, which was known to them, in order to protect their valuable criminal customers and also to prevent the Plaintiffs' law-enforcement authorities from conducting investigations that could demonstrate the RJR DEFENDANTS' complicity in the money-laundering schemes.

87. When the RJR DEFENDANTS indicated that they were unable to identify to whom the products were sold, they made a false representation to the Plaintiffs regarding a matter of great importance to

the Plaintiffs. The Plaintiffs reasonably relied upon the representations of the RJR DEFENDANTS because the RJR DEFENDANTS were supposed to be acting in good faith pursuant to cooperation agreements that they entered into with the Plaintiffs. The Plaintiffs have suffered great financial harm as a result of RJR DEFENDANTS' failure to identify the customers to which the seized products were sold. The RJR DEFENDANTS' false statements have made it costly and/or impossible to apprehend the coconspirators who are trafficking in the cigarettes as a part of the scheme to launder criminal proceeds.

88. The RJR DEFENDANTS filed or caused the filing of false and fraudulent documents that misstated the destination and the value of cigarettes. This was done to advance the money-laundering scheme. In many nations, including the MEMBER STATES and Turkey, costly surety bonds are required of shippers that transport cigarettes across the country. By grossly undervaluing the cigarettes being shipped, the RJR DEFENDANTS and their coconspirators reduced the purported value of their shipments and thereby dramatically reduced the surety bonds that must be paid on the cigarettes. In so doing, the RJR DEFENDANTS and their coconspirators reduce their costs associated with the sale and delivery of the cigarettes.

89. With respect to cigarette sales into Iraq, the RJR DEFENDANTS and/or their coconspirators filed false and fraudulent documents with Spanish authorities to conceal that the final destination of the cigarettes was Iraq. The value of the cigarettes in question was fraudulently understated by the RJR DEFENDANTS and/or their coconspirators to expedite the delivery of cigarettes into Iraq with the

payment of minimal surety bonds. THE EUROPEAN COMMUNITY and the MEMBER STATES reasonably relied upon such false and fraudulent documents to their detriment.

90. The RJR DEFENDANTS entered into an understanding or agreement, express or tacit, with their distributors, customers, agents, consultants, and other coconspirators, to participate in a common scheme, plan, or design to commit tortious and illegal acts, including money laundering. In pursuance of the agreement, the RJR DEFENDANTS and other tobacco companies formed, managed, and directed the affairs of several groups including, without limitation: (a) International Committee on Smoking Issues ("ICOSI"); (b) EEC Task Force on Consumerism; (c) International Duty Free Confederation ("IDFC"); (d) "Confederation of European Community Cigarette Manufacturers Ltd." ("CECCM"); and (e) CECCM's "Duty Free Study Group" which was comprised entirely of company representatives, including those of the RJR DEFENDANTS. Acting through the aforesaid groups, the RJR DEFENDANTS obstructed government oversight and falsely represented to Plaintiffs and the public that the RJR DEFENDANTS were not involved in illegal activities.

*RJR's Responsibility for its Agents, Employees, and Coconspirators*

91. The acts and omissions of the individuals employed by the RJR DEFENDANTS are imputed to the RJR DEFENDANTS under the doctrines of vicarious liability and *respondeat superior*. The RJR DEFENDANTS actually benefited from the performance of predicate acts of racketeering through

increased sales, profits, name-brand recognition, and market share.

92. The RJR DEFENDANTS and their employees were central figures and aggressors in the fraudulent money-laundering scheme. RJR personnel performed the fraudulent and illegal acts described above on behalf of the RJR DEFENDANTS within the scope and course of their employment with the RJR DEFENDANTS. Through their officers and directors, the RJR DEFENDANTS had knowledge of, or were willfully blind and recklessly indifferent toward, the unlawful activity.

93. The RJR DEFENDANTS are liable under principles of agency. Each of the RJR DEFENDANTS is responsible for the conduct of its supervisory employees, who violated the law and caused the RJR DEFENDANTS to enter into and act to further money-laundering conspiracies.

*RJR's Use of Wires and Mails*

94. During all relevant times, the RJR DEFENDANTS communicated with each other and with their coconspirators on virtually a daily basis by means of U.S. interstate and international wires as a means of obtaining orders for cigarettes, arranging for the sale and shipment of cigarettes, and arranging for and receiving payment for the cigarettes in question. Under principles of conspiracy and concert of action, the RJR DEFENDANTS are jointly and severally liable for the actions of their coconspirators in the furtherance of the money-laundering scheme.

95. The RJR DEFENDANTS and their coconspirators utilized the interstate and international mail and wires, and other means of

communication, to prepare and transmit documents that intentionally misstated the purchases of the cigarettes in question so as to mislead the authorities within the United States, THE EUROPEAN COMMUNITY, and the MEMBER STATES in regard to the nature and objectives of the money-laundering scheme. THE EUROPEAN COMMUNITY and its MEMBER STATES, including the Republic of Austria, Kingdom of Belgium, Republic of Bulgaria, Republic of Cyprus, Czech Republic, Kingdom of Denmark, Republic of Estonia, Republic of Finland, French Republic, Federal Republic of Germany, Hellenic Republic, Republic of Hungary, Republic of Ireland, Italian Republic, Republic of Latvia, Republic of Lithuania, Grand Duchy of Luxembourg, Republic of Malta, Kingdom of the Netherlands, Republic of Poland, Portuguese Republic, Romania, Slovak Republic, Republic of Slovenia, Kingdom of Spain, and Kingdom of Sweden, reasonably relied on said misrepresentations of fact, were damaged as a result, and continue to be damaged by such reliance.

96. The RJR DEFENDANTS, their subsidiary corporations, and their coconspirators have used the mail and telephonic and other wire forms of communication on a daily basis in furtherance of the money-laundering schemes described above. Specifically, the U.S. mails and wires are used by the RJR DEFENDANTS to bill and pay for the cigarettes, to confirm billing and payment for the cigarettes, to account for the payment of the cigarettes to the RJR DEFENDANTS and their subsidiaries, and to maintain an accounting of the proceeds received by the RJR DEFENDANTS from the sale of the cigarettes, with said proceeds ultimately being

returned to the RJR DEFENDANTS in the United States.

97. The RJR DEFENDANTS' coconspirators, the distributors and money launderers, utilize the mail and wire communications on a continuing basis to advance the money-laundering schemes, specifically to determine marketing strategies, to order cigarettes, to arrange for sale of the cigarettes, to arrange for distribution of cigarettes, to arrange payments for cigarettes, and to further support other aspects of the money-laundering schemes.

98. Because the money-laundering conspiracy is a multi-million-dollar per year operation and is continuing on a daily basis, it is impractical and impossible, in advance of discovery, to delineate each and every fraudulent communication in what is a pervasive and ongoing use of the mails and wires in furtherance of money-laundering activities. By conducting some of their activities in countries known for bank secrecy, the RJR DEFENDANTS have taken affirmative steps to prevent the victims of their fraud and illicit conduct from discovering the exact details of the vast number of wire and mail communications that furthered the money-laundering schemes, including orders for tobacco products, and repatriation of the proceeds of the money-laundering schemes to the United States.

99. In addition to using the mail and wire communications themselves to advance the money-laundering schemes, the RJR DEFENDANTS caused the use of the U.S. mails and wires in furtherance of the money-laundering schemes by acting with knowledge that the use of the U.S. mails and/or wires would follow in the ordinary course of business and/or

could be reasonably foreseen as a result of their activities. The mailings or use of wire communications were for the purpose of executing the money-laundering schemes. These mail and wire transmissions furthered the money-laundering schemes and were essential to the success of those schemes, since such communications were necessary for the coconspirators, who were separated by great distances and national borders, to effectuate their common goals within the money-laundering enterprises.

## IX. THE REYNOLDS AMERICAN DEFENDANTS' ACQUISITION OF BROWN & WILLIAMSON TOBACCO CORPORATION'S BUSINESS

100. On or about July 30, 2004, the Defendant REYNOLDS AMERICAN INC. came into existence by virtue of the merger more fully described in paragraphs 18-22 above. As a result of the merger, the Defendants REYNOLDS AMERICAN INC., R.J. REYNOLDS TOBACCO HOLDINGS, INC., and R.J. REYNOLDS TOBACCO COMPANY (a North Carolina corporation), acquired and became the parent companies to the ORIGINAL RJR DEFENDANTS. Up to and including the date of the merger in question, the ORIGINAL RJR DEFENDANTS were engaged in an active and ongoing Money-Laundering Enterprise as described above. The REYNOLDS AMERICAN DEFENDANTS, in acquiring the assets, liabilities, employees, and operations of the ORIGINAL RJR DEFENDANTS, were fully aware that they were acquiring an active and ongoing Money-Laundering Enterprise.

101. Since the date of the aforesaid acquisition, the REYNOLDS AMERICAN DEFENDANTS, through their agencies, instrumentalities, and coconspirators, have continued forward with the Money-Laundering Enterprise. The REYNOLDS AMERICAN DEFENDANTS have made, sold, and shipped both RJR and Brown & Williamson-brand cigarettes to Panama and elsewhere, and received criminal proceeds in payment for cigarettes, in the same way that the ORIGINAL RJR DEFENDANTS had conducted money laundering for over a decade. Examples of such shipments occurred in August 2004, March 2005, April 2005, May 2005, and October 2005.

102. When the REYNOLDS AMERICAN DEFENDANTS acquired the RJR Money-Laundering Enterprise, it was with the intention that they would continue and build upon said enterprise and further and that they would make use of their newly acquired assets, including the domestic operations of Brown & Williamson, for the purpose of expanding upon their illegal cigarette sales and money-laundering activities.

103. As a result of the above-described merger, the REYNOLDS AMERICAN DEFENDANTS acquired and obtained control over Brown & Williamson as described above. Brown & Williamson was an ongoing business as of the time it was acquired. The REYNOLDS AMERICAN DEFENDANTS understood the business they were acquiring at the time of the acquisition. Since August 2004, following the merger, the agents, employees, instrumentalities, and customers of Brown & Williamson, now acting as agents, instrumentalities, employees, and/or customers of the

REYNOLDS AMERICAN DEFENDANTS, have made cigarettes and have sold cigarettes to criminals and received criminal proceeds in payment for said cigarettes as described below. High-ranking officers of Brown & Williamson were appointed and continue to serve as high-ranking officers of REYNOLDS AMERICAN INC.

*Money Laundering Through Panama*

104. Since their formation in July 2004, the REYNOLDS AMERICAN DEFENDANTS have both continued the B&WTC business which they acquired and developed money-laundering schemes.

105. An example of the money-laundering scheme is demonstrated by the use of Giovannex in Panama by the REYNOLDS AMERICAN DEFENDANTS. Since August 2004 and continuing at least through 2009, the REYNOLDS AMERICAN DEFENDANTS have manufactured traditional Brown & Williamson-brand cigarettes in the United States and sold them in large volumes to customers throughout the world through the use of their cut out in Panama, Giovannex. On many occasions, including August 2004, February 2005, March 2005, and April 2005, the REYNOLDS AMERICAN DEFENDANTS have made major shipments of product from the United States to Giovannex in Panama. Once the cigarettes are delivered to Giovannex, Giovannex has sold the cigarettes to European Community companies. Shipments of this type have occurred in September 2005, September 2006, and October 2006.

106. In an example of a newly created branch of the scheme, the REYNOLDS AMERICAN DEFENDANTS, over the last two years, have sold

products through a company known as UETA and its sister companies. In a typical example of this scheme, the REYNOLDS AMERICAN DEFENDANTS manufacture either "traditional RJR brands" or "traditional Brown & Williamson brands" and sell them to UETA in Panama. Once UETA takes the cigarettes into its possession, they are delivered to companies in the European Community. Shipments of this type are occurring on a regular basis and have occurred as recently as February 2009.

107. In another variation of the scheme, the REYNOLDS AMERICAN DEFENDANTS manufacture cigarettes which they sell to certain companies in the European Community. These sales are accomplished through a company known as Maritrade Investments Ltd. which lists its corporate offices as being located in Kenilworth, New Jersey, although it actually acts on behalf of a company known as Amec-Rijeka located in Croatia. The European Community companies make payments to the REYNOLDS AMERICAN DEFENDANTS by way of bank accounts in the European Community, with corresponding banks including the American Express Bank in Frankfurt, Germany. Ultimately, the REYNOLDS AMERICAN DEFENDANTS receive payment for these cigarettes in their bank accounts in the United States. Sales of the cigarettes as described above with resulting payments to the REYNOLDS AMERICAN DEFENDANTS have, for example, occurred on August 10, 2006, February 4, 2006, February 25, 2006, March 17, 2006, March 29, 2006, April 16, 2006, May 7, 2006, June 10, 2006, September 12, 2006, February 12, 2007, March 23, 2007, May 19, 2007, June 8, 2007, and on other dates.

108. Sales of REYNOLDS AMERICAN products into illegal channels have increased in 2008 and 2009 as a result of RJR's reacquisition of parts of its "duty-free" business in 2006. Simultaneously, the relative weakness of the U.S. dollar has made authentic "made in the USA" goods a bargain compared to cigarettes manufactured in the EUROPEAN COMMUNITY. This being the case, there has been an increase in demand for the "made in the USA" product. While many other tobacco companies are adhering to anti money-laundering protocols which would make it impossible for criminal organizations to purchase their cigarettes, the REYNOLDS AMERICAN DEFENDANTS have failed to do so.

*Money Laundering Through Cigarette Manufacturing and Sales in the European Community*

109. Since their inception in July 2004, the REYNOLDS AMERICAN DEFENDANTS have, through their wholly owned subsidiary, R.J. REYNOLDS GLOBAL PRODUCTS, INC., entered into joint ventures for the production and sale of cigarettes which were manufactured in the EUROPEAN COMMUNITY.

110. On or about July 16, 2002, the ORIGINAL RJR DEFENDANTS acquired a fifty percent interest in R.J. Reynolds-Gallaher International SARL, a joint venture intended to produce "American-blend cigarettes" for sale in the EUROPEAN COMMUNITY, with specific marketing targets of France, Spain, the Canary Islands, Italy, Andorra, Belgium, and Luxembourg. On or after the aforesaid acquisition, ownership and control of RJR's interest in the joint venture was placed in the hands

of R.J. REYNOLDS GLOBAL PRODUCTS, INC. In the merger of July 30, 2004, R.J. REYNOLDS GLOBAL PRODUCTS, INC. became a subsidiary of REYNOLDS AMERICAN INC. in order to continue to enhance the RJR DEFENDANTS' money-laundering enterprise.

111. Both before and after July 30, 2004, the primary purpose of R.J. REYNOLDS GLOBAL PRODUCTS, INC. was to expedite the RJR DEFENDANTS' money-laundering enterprise. Consistent with its published business plan, the REYNOLDS AMERICAN DEFENDANTS specifically targeted markets such as Andorra and the Canary Islands in order to accomplish their goal of maximum illegal sales of their tobacco products in exchange for criminal proceeds. The instances of sales for criminal proceeds by the REYNOLDS AMERICAN DEFENDANTS through R.J. REYNOLDS GLOBAL PRODUCTS, INC. are too numerous to be enumerated. They continue up to and including the date of this complaint.

*Illegal Sales in the European Community*

112. Over the last five years and continuing to the present date, REYNOLDS AMERICAN INC. has been responsible for large cigarette sales into illegal channels in the European Community and has received criminal proceeds in payment for their cigarettes. The market for illegal cigarettes in the European Community is dominated by members of organized crime groups. Accordingly, virtually all of the money received by REYNOLDS AMERICAN INC. as a result of cigarette sales to these channels constitutes criminal proceeds that REYNOLDS

AMERICAN INC. laundered through the sale of cigarettes.

*Reynolds American, Inc.'s Exploitation of Port Facilities, Banks, Wires, Mails, and Other Institutions in the European Community*

113. Since August 2004, REYNOLDS AMERICAN INC. has been responsible for the distribution of its brands through the EUROPEAN COMMUNITY and into various countries. In addition to exploiting the port facilities of the EUROPEAN COMMUNITY as a part of its illegal scheme, REYNOLDS AMERICAN INC. through its sales to various EUROPEAN COMMUNITY companies misused or caused the misuse of EUROPEAN COMMUNITY wires and mails, banks, warehouses, and other private and public institutions in the EUROPEAN COMMUNITY. In what was and is a pervasive and ongoing illegal scheme, REYNOLDS AMERICAN INC. has been and continues to be responsible for the sales of its products to and through various EUROPEAN COMMUNITY companies with the knowledge that the ultimate destination of its products is the illegal sale of its products into various nations, and with the further knowledge that the proceeds with which REYNOLDS AMERICAN INC. is ultimately paid constitute criminal proceeds.

114. All the aforesaid transactions were accomplished through the use of the U.S. wires and/or mails and EUROPEAN COMMUNITY wires and/or mails. The criminal proceeds utilized to pay for the aforesaid cigarettes passed through financial institutions in the EUROPEAN COMMUNITY and

ultimately into the coffers of REYNOLDS AMERICAN INC. in the United States.

*Travel and Entertainment by Reynolds American Inc. Employees*

115. Since August 2004, to advance the money-laundering scheme set forth above, the employees, executives, and managers of REYNOLDS AMERICAN INC. often travel extensively, both to supervise the schemes and to entertain REYNOLDS AMERICAN INC.'S customers who have been involved in illegal sales. REYNOLDS AMERICAN INC.'S executives traveled to Europe, South America, and the Middle East to meet with, to entertain, and to maintain relations with these customers.

*Reynolds American Inc.'s Efforts to Deceive the Plaintiffs*

116. Since August 2004, REYNOLDS AMERICAN INC. caused the filing of false and fraudulent documents that misstated the destination and the value of cigarettes. This was done to advance the money-laundering scheme. The PLAINTIFFS reasonably relied upon the representations of REYNOLDS AMERICAN INC.'S agents because the DEFENDANTS were supposed to be acting in good faith. The PLAINTIFFS have suffered great financial harm as a result of the misrepresentations made by REYNOLDS AMERICAN INC.'S agents.

117. REYNOLDS AMERICAN INC. entered into an understanding or agreement, express or tacit, with its distributors, customers, agents, consultants, and other coconspirators, to participate in a common scheme, plan, or design to commit tortious and illegal acts, including money laundering. In pursuance of the agreement, REYNOLDS AMERICAN INC. and

other tobacco companies formed, managed, and directed the affairs of several groups including, without limitation: (a) International Committee on Smoking Issues; (b) EEC Task Force on Consumerism; (c) International Duty Free Confederation; (d) "Confederation of European Community Cigarette Manufacturers Ltd."; and (e) CECCM's "Duty Free Study Group" which was comprised entirely of company representatives, including those of REYNOLDS AMERICAN INC. Acting through the aforesaid groups, REYNOLDS AMERICAN INC. obstructed government oversight and falsely represented to Plaintiffs and the public that REYNOLDS AMERICAN INC. was not involved in illegal activities.

*Reynolds American Inc.'s Responsibility for its Agents, Employees, and Coconspirators*

118. The acts and omissions of the individuals employed by REYNOLDS AMERICAN INC. are imputed to REYNOLDS AMERICAN INC. under the doctrines of vicarious liability and *respondeat superior*. REYNOLDS AMERICAN INC. actually benefited from the performance of predicate acts through increased sales, profits, name-brand recognition, and market share. REYNOLDS AMERICAN INC. and its employees were central figures and aggressors in the fraudulent scheme, and REYNOLDS AMERICAN INC.'S personnel and executives performed their fraudulent acts on behalf of REYNOLDS AMERICAN INC. within the scope and course of their employment with REYNOLDS AMERICAN INC.

119. REYNOLDS AMERICAN INC. is liable under principles of agency. REYNOLDS AMERICAN

INC. is responsible for the conduct of its employees who had either intentionally disregarded the law or had acted with plain indifference or willful blindness to its requirements.

*Reynolds American Inc.'s Use of Wires and Mails*

120. During all relevant times since August 2004, REYNOLDS AMERICAN INC. communicated with its coconspirators on virtually a daily basis by means of U.S. interstate and international wires as a means of obtaining orders for cigarettes, arranging for the sale and shipment of cigarettes, and arranging for and receiving payment for the cigarettes in question. Under principles of conspiracy and concert of action, REYNOLDS AMERICAN INC. is jointly and severally liable for the actions of its coconspirators in the furtherance of the money-laundering scheme.

121. REYNOLDS AMERICAN INC., its subsidiary corporations, and its coconspirators use the mail and telephonic and other wire forms of communication on a continual basis to pay for and confirm billing and payment for cigarettes, to account for the payment of cigarettes to REYNOLDS AMERICAN INC. and its subsidiaries, and to maintain an accounting of the illicit proceeds received by REYNOLDS AMERICAN INC. from the sale of the cigarettes, with said proceeds ultimately being returned to the REYNOLDS AMERICAN INC. in the United States.

122. Since August 2004, and continuing through the present date, REYNOLDS AMERICAN INC.'S coconspirators, the distributors and customers, utilize the mail and wire communications on a continuing basis in order to determine marketing

strategies, order cigarettes, arrange for sale of the cigarettes, arrange for distribution of cigarettes, arrange for payment of cigarettes, and to support other aspects of the money-laundering scheme.

123. At all relevant times since August 2004, REYNOLDS AMERICAN INC. engaged in a scheme to defraud and cheat the Plaintiffs. The scheme to defraud and cheat was inconsistent with moral uprightness, fundamental honesty, fair play and right dealing in the general and business life of members of society. In the execution of or attempt to execute this scheme, REYNOLDS AMERICAN INC. used the U.S. mail in violation of 18 U.S.C. Sections 2 and 1341, and interstate wires, and in violation of 18 U.S.C. Sections 2 and 1343.

124. In that the money-laundering enterprise is a multi-million dollar per year operation and is ongoing on a daily basis, it is impractical and impossible to delineate each fraudulent communication in what is a pervasive and ongoing use of the mails and wires in furtherance of the money-laundering activities.

125. REYNOLDS AMERICAN INC., in addition to using the mail and wire communications itself, caused the mailing and use of wire communications in that it acted with knowledge that the use of the mail and/or wire communications would follow in the ordinary course of business and/or could be reasonably foreseen as a result of its activities; and the mailing or use of wire communications was for the purpose of executing the scheme, to wit, the money-laundering activities. The aforesaid mail and wire transmissions furthered the scheme and were essential to the scheme because the

aforesaid communications were necessary for the coconspirators, who were separated by great distances, to effectuate their common goals within the money-laundering enterprise.

126. REYNOLDS AMERICAN INC. has used, and continues to use, the wires, mails, and Internet to further its scheme to defraud Plaintiffs and deprive them of money and property, while attempting to conceal its complicity in the money-laundering scheme.

127. Since its inception in August 2004, REYNOLDS AMERICAN INC. was a conspirator and direct participant in the affairs of the money-laundering enterprise, and each participant in the conspiracy is responsible for the actions of the others in pursuit of the money-laundering scheme. For the benefit of REYNOLDS AMERICAN INC. and with the knowledge and authorization of high-ranking corporate officials of REYNOLDS AMERICAN INC., REYNOLDS AMERICAN INC., acting with and through its conspirators, agents and employees, carried out the foregoing activities to facilitate the money-laundering scheme.

128. REYNOLDS AMERICAN INC. entered into an understanding or agreement, express or tacit, with its distributors, customers, agents, consultants, and other coconspirators, to participate in a common scheme, plan, or design to commit tortious acts and thereby launder criminal proceeds. In pursuance of the agreement, REYNOLDS AMERICAN INC. and its distributors, customers, agents, consultants, and other coconspirators acted tortiously by, among other things, committing the aforesaid acts constituting fraud, negligent misrepresentation, unjust

enrichment, public nuisance, and negligence, thereby causing harm to Plaintiffs. REYNOLDS AMERICAN INC., through joint action with its coconspirators, acted tortiously, recklessly, unlawfully, and negligently, to the detriment of Plaintiffs. By means of the aforesaid concerted action, REYNOLDS AMERICAN INC. and its coconspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein.

129. The above-described money-laundering enterprise, which is an association-in-fact, has generated millions of dollars in illegal profits for REYNOLDS AMERICAN INC. and its coconspirators. A large portion of these illegal profits is returned to the Defendant in its offices and facilities in the United States.

130. All the aforesaid activities occurred with both the knowledge and the direction of persons at both middle management and high-level management positions within the Defendant corporation. A substantial percentage of the cigarettes that are utilized in this enterprise are shipped from the United States.

## X. INTEREST OF THE UNITED STATES, THE EUROPEAN COMMUNITY, AND THE MEMBER STATES IN THE RJR DEFENDANTS' SCHEMES

131. International money laundering has become a threat to U.S. security, as well as to the security of THE EUROPEAN COMMUNITY and the MEMBER STATES. As Asa Hutchinson, then Director of the United States Drug Enforcement Administration, has stated: "The illegal drug production that undermines America's culture also

funds terror and erodes democracies across the globe. They all represent a clear and present danger to our national security." Since the money-laundering scheme that is the subject matter of this complaint is a fundamental part of the drug-production cycle, these money-laundering activities represent a threat to U.S. national security as well as the security of THE EUROPEAN COMMUNITY.

132. Money laundering through the purchase and sale of cigarettes has become a primary means by which terrorists finance their illegal activities. The RJR DEFENDANTS knowingly or negligently support the activities of terrorists when they allow terrorist groups to launder narcotics proceeds in THE EUROPEAN COMMUNITY through the purchase of U.S.-made cigarettes.

133. The majority of the conduct of the RJR DEFENDANTS that is material to this case is conducted by the RJR DEFENDANTS in the United States. Further, substantial effects are experienced in the United States and in this district as a result of the schemes that are the subject matter of this complaint because:

(a.) The RJR DEFENDANTS receive, and have received, the profits and proceeds of said schemes in the United States. Such funds have been repatriated to this country through money laundering and other acts of concealment, all of which threaten the integrity of the U.S. financial system.

(b.) The money-laundering schemes that are the subject matter of this complaint, in particular those involving Russian organized crime, are centered largely in and operate from this district.

The majority of the money-laundering activities described in relation to this portion of the scheme occurred in Queens, New York, and tens of millions of dollars of laundered criminal proceeds that constitute the subject matter of this complaint were laundered in Queens, New York.

(c.) The United States and THE EUROPEAN COMMUNITY have recognized in international conventions their mutual interest in ending transnational money-laundering schemes. The RJR DEFENDANTS' conduct contravenes the vital public interest in stemming such illicit conduct.

(d.) Large volumes of false documents have been filed with the United States Customs Service and the Bureau of Alcohol, Tobacco and Firearms by the RJR DEFENDANTS and/or their coconspirators. The purpose of these filings was to deceive the United States Customs Service and the Bureau of Alcohol, Tobacco and Firearms and allow the criminal activity to continue.

(e.) The money-laundering schemes are intertwined with organized crime in New York City. Some of the largest and most dangerous narcotics traffickers in the world reside and conduct business in the Eastern District of New York. Furthermore, certain individuals who work and reside in the Eastern District of New York have established a multi-million dollar industry within the Eastern District of New York for the laundering of criminal proceeds through cigarette sales. Millions of dollars worth of real estate has been purchased within the Eastern District of New York in conjunction with this money-laundering scheme.

(f.) This district and its transportation facilities have been used by the RJR DEFENDANTS as a springboard for the transnational shipment of cigarettes as part of the money-laundering scheme.

(g.) The money-laundering scheme is advanced by numerous acts of wire fraud and mail fraud, many of which occurred in the United States. The United States has an interest in preventing such schemes from being carried out through the U.S. telecommunications system and postal system.

134. Throughout THE EUROPEAN COMMUNITY, cigarettes and narcotics routinely form parts of the same criminal transactions, and the incidence of violence associated with such trade is rising rapidly. High-ranking executives of the RJR DEFENDANTS knew or reasonably should have known that their tobacco products were being sold to and through narcotics traffickers through illegal means. These executives failed to act with reasonable care to investigate and abate these activities and failed otherwise to act to prevent the damage to Plaintiffs.

135. All the aforesaid activities occurred with the knowledge and at the direction of persons at both middle management and high-level management positions within the RJR DEFENDANTS. The vast majority of the cigarettes utilized in the money-laundering schemes are shipped from the United States. The vast majority of the activities of the RJR DEFENDANTS that are the subject matter of this complaint, including management decisions and direction of the schemes, are conducted by the RJR DEFENDANTS in the United States and, more

particularly, from the RJR DEFENDANTS' offices in the State and City of New York.

136. All of the predicate acts set forth herein share the same purpose and the same victims, namely, THE EUROPEAN COMMUNITY and its MEMBER STATES, including the Republic of Austria, Kingdom of Belgium, Republic of Bulgaria, Republic of Cyprus, Czech Republic, Kingdom of Denmark, Republic of Estonia, Republic of Finland, French Republic, Federal Republic of Germany, Hellenic Republic, Republic of Hungary, Republic of Ireland, Italian Republic, Republic of Latvia, Republic of Lithuania, Grand Duchy of Luxembourg, Republic of Malta, Kingdom of the Netherlands, Republic of Poland, Portuguese Republic, Romania, Slovak Republic, Republic of Slovenia, Kingdom of Spain, and Kingdom of Sweden.

*The Palermo Convention*

137. On December 13, 2000, Under Secretary of State for Global Affairs Frank Loy signed the Palermo Convention on behalf of the United States. The Palermo Convention was enacted in 2000 as a comprehensive treaty to fight organized crime. The Palermo Convention entered into force on September 29, 2003, in accordance with Article 38 of the Convention. It has been signed by all the Plaintiffs in this case and has been ratified by many of the Plaintiffs, including the European Community, Republic of Austria, Kingdom of Belgium, Republic of Cyprus, Kingdom of Denmark, Republic of Finland, French Republic, Federal Republic of Germany, Republic of Hungary, Italian Republic, Republic of Latvia, Republic of Lithuania, Grand Duchy of Luxembourg, Republic of Malta, Kingdom of the

Netherlands, Republic of Poland, Portuguese Republic, Slovak Republic, Republic of Slovenia, Kingdom of Spain, and Kingdom of Sweden. The Palermo Convention was ratified by the United States Senate in October 2005 and entered into full force and effect for the United States on or about December 3, 2005.

138. The Palermo Convention demonstrates the overriding U.S. interest in the prevention of transnational organized crime in all forms and, in particular, in relation to narcotics trafficking and money laundering. The Palermo Convention, by its specific terms, confirms that by virtue of the United States' overriding interest in the prevention of organized crime, narcotics trafficking, and money laundering that foreign governments will be granted access to the U.S. courts even if the matter in question wholly or partially involves fiscal (tax) matters.

139. A letter from then Secretary of State, Colin L. Powell, to the President dated January 22, 2004, stated in pertinent part the following:

> The Convention and these two Protocols are the first multilateral law enforcement instruments designed to combat the phenomenon of transnational organized crime. . . . They thus would enhance the United States' ability to render and receive assistance on a global basis in the common struggle to prevent, investigate and prosecute transnational organized crime.
>
> . . . .
>
> . . . Article 6 is of crucial importance to global anti-money-laundering efforts because

it for the first time imposes an international obligation on States Parties to expand the reach of their laundering laws to predicate offenses associated with organized criminal activities other than those related to narcotics trafficking that are addressed in the 1988 United States Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. . . .

. . . .

Article 10 ("Liability of legal persons") compels States Parties to fill what historically has been a loophole in the ability of many states to combat organized crime—their inability to hold not only natural persons but also legal ones liable for illegal conduct. This provision requires the creation of criminal, *civil* or administrative liability, and accompanying sanctions, for corporations that participate in serious crimes involving an organized criminal group or in the offenses covered by the Convention (i.e., serious crimes generally as well as the offenses criminalized). Such corporate liability is without prejudice to the criminal liability of the natural persons who committed the offenses.

. . . .

Pursuant to Article 18 ("Mutual legal assistance"), State Parties are obligated to afford each other the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to offenses within the scope of the Convention, provided that the state seeking

> assistance demonstrates that it has reasonable grounds to suspect that the offense is transnational in nature and involves an organized criminal group. . . .
>
> . . . .
>
> As is the case with extradition, Article 18, paragraph 22 provides that assistance may *not* be refused on the sole ground that the offense involves a *fiscal matter* or on the ground of bank secrecy.

(Emphasis added.)

140. The United States' signing of the Palermo Convention along with the recommendation letter of Secretary of State Powell conclusively demonstrate the United States' interest in the matters complained of in this Complaint without regard to whether they do or do not wholly or partially involve the fiscal (tax) matters of the Plaintiffs.

*The USA PATRIOT Act*

141. In 2001, the United States Congress passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001. The Act was signed into law by President George W. Bush on October 26, 2001. USA PATRIOT Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

142. The USA PATRIOT Act demonstrates the United States' overarching interests in preventing transnational organized crime, including money laundering and the defrauding of foreign governments. In fact, the USA PATRIOT Act makes fraud against foreign governments a specified

unlawful activity (SUA) so as to bring offenses against foreign governments, such as those pled in this complaint, within the purview of the U.S. money-laundering statutes and RICO.

143. Section 315 of the USA PATRIOT Act expanded the definition of specified unlawful activities to include an array of offenses committed against foreign governments. The USA PATRIOT Act states in pertinent part:

> SEC. 315. INCLUSION OF FOREIGN CORRUPTION OFFENSES AS MONEY LAUNDERING CRIMES.
>
> Section 1956(c)(7) of title 18, United States Code, is amended—
>
> (1) in subparagraph (B)—
>
> . . . .
>
> (C) by adding at the end the following:
>
> . . . .
>
> "(vi) an offense with respect to which the U[illegible]ted States would be obligated by a multilateral treaty, either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States;"
>
> . . . .

By virtue of the currently existing multilateral treaties between the United States and the Plaintiffs, most of the offenses complained of in the Plaintiffs' lawsuit are extraditable offenses and, therefore, constitute specified unlawful activities for the money-laundering statute and for RICO. As such, the United States has, by passage of the USA PATRIOT

Act, confirmed the United States' interest in the offenses that constitute the subject matter of this Complaint.

## XI. CONTINUING DAMAGE TO THE PLAINTIFFS AND COMPELLING NEED FOR INJUNCTIVE AND EQUITABLE RELIEF

144. THE EUROPEAN COMMUNITY and the MEMBER STATES have the right and duty to make claims for legal, equitable, and declaratory relief for redress against the RJR DEFENDANTS' organized crime and money-laundering conspiracy that is the subject matter of this complaint. As more specifically alleged below, THE EUROPEAN COMMUNITY and the MEMBER STATES are entitled to and hereby seek compensatory damages (or, alternatively, restitution at law), equitable relief (including injunctive relief and disgorgement of ill-gotten gains), punitive damages, declaratory relief, and other remedies available at law and equity.

*Compensatory Damages*

145. For purposes of this complaint, the Plaintiffs do not seek damages or equitable relief from the Defendants that (a) would result in an obligation of indemnity under the Purchase Agreement dated as of March 9, 1999, as amended and restated as of May 11, 1999, among R.J. REYNOLDS TOBACCO COMPANY, RJR NABISCO, INC. (the "Sellers") and Japan Tobacco Inc. (the "Buyer"), being owed by the Buyer to any member of the Sellers' Group (as defined in the Purchase Agreement); or (b) were released and discharged in the Release executed by THE EUROPEAN COMMUNITY and certain MEMBER STATES dated December 14, 2007. Without limitation, the Plaintiffs

seek all available damages and equitable relief in regard to (i) any "RJR-brands" *other than* Camel, Doral, Dorchester, MacDonald, Magna, Maxim, Monte Carlo, More, Now, Passport, Quest, Salem, Select, Vantage, Winchester, Windsor, Winston, and any name variation of those brands; (ii) all "Brown & Williamson brands" sold by the REYNOLDS AMERICAN DEFENDANTS; (iii) all brands manufactured or sold as a result of any joint ventures between RJR and REYNOLDS AMERICAN, INC. and any other companies; and (iv) all cigarette brands, including those referred to above, for sales after December 14, 2007.

146. As a result of the RJR DEFENDANTS' wrongful activities, THE EUROPEAN COMMUNITY and the MEMBER STATES have been injured in their business and property, and the RJR DEFENDANTS have secured vast profits and proceeds from their illegal scheme. The injuries to the Plaintiffs include, but are not limited to, the following:

(a.) *Lost Sales Due to Money-Laundering Scheme.* Under the laws of the various MEMBER STATES, numerous MEMBER STATES have manufactured and/or distributed and/or sold cigarettes during the time relevant to this complaint. As such, they are direct competitors in the market for cigarettes in the EUROPEAN COMMUNITY and in other markets in which they compete including, but not limited to, the United States. The RJR DEFENDANTS' money-laundering scheme described in this complaint gives the RJR DEFENDANTS an unfair and illegal competitive advantage over the PLAINTIFFS and causes a loss of business and property to the MEMBER STATES because sales

that would have been made by the PLAINTIFFS' legitimate business operations were lost to the DEFENDANTS' money-laundering enterprise.

(b.) *Lost Sales Due to Illegal Distribution Scheme.* In that several of the MEMBER STATES were direct competitors to the RJR DEFENDANTS, every pack of illegally distributed cigarettes unfairly and illegally supplanted sales of PLAINTIFFS' cigarettes. Furthermore, the products distributed illegally by the RJR DEFENDANTS via their criminal scheme gained an unfair and illegal competitive advantage over the PLAINTIFFS whose products did comply with MEMBER STATE law and MEMBER STATE labeling requirements. Health warnings and other information are mandated by MEMBER STATE law and follow a public policy tendency towards these matters espoused by many nations, including the United States. The tobacco products illegally distributed by the RJR DEFENDANTS do not comply with these requirements. This is of benefit to the RJR DEFENDANTS because their noncompliance gives them a competitive advantage over their competitors in the EUROPEAN COMMUNITY market, including the MEMBER STATES. In addition to the unfair and illegal cost savings related to the labeling requirements, the fact that the illegal cigarettes contain different information, are labeled in English, and other factors, are a significant selling point for the illegally distributed product. This translates into an unfair competitive advantage over their direct competitors, the MEMBER STATES of the EUROPEAN COMMUNITY. This is a specifically intended and additional benefit to the RJR DEFENDANTS of their illegal and criminal

distribution scheme, and this causes additional losses to the PLAINTIFFS in that they lose sales.

(c.) *Reduced Value of Sales.* In addition to lost sales, the RJR DEFENDANTS' money-laundering scheme described in this complaint gives the RJR DEFENDANTS an unfair and illegal competitive advantage over the PLAINTIFFS and causes a loss of business and property to the MEMBER STATES because the RJR DEFENDANTS' use of the laundered narcotics proceeds, other criminal proceeds, and the illegal distribution scheme allows the RJR DEFENDANTS to manipulate the prices of their illegally distributed product which is intended to and, in fact, does have the effect of limiting the price at which the PLAINTIFFS can sell their cigarettes. Specifically, this loss is the differential between the greater price at which the PLAINTIFFS could have sold their cigarettes (with no loss in sales volume) and the reduced price at which they are forced to sell their products by the RJR DEFENDANTS' narcotics and other criminal money-laundering scheme. Simply put, but for the RJR DEFENDANTS' narcotics and other criminal money-laundering and illegal distribution scheme, the PLAINTIFFS would be able to demand a higher price for their products without losing any sales because of the higher price. This is an important and specifically intended effect of the RJR DEFENDANTS' scheme.

(d.) *Lost Profits from Cigarette Sales by PLAINTIFFS.* In that the RJR DEFENDANTS' illegal distribution scheme gives the DEFENDANTS an unfair and illegal competitive advantage over their direct competitors, the MEMBER STATES, and illegally supplants the PLAINTIFFS' tobacco sales

and reduces the prices at which the PLAINTIFFS can sell their products, the PLAINTIFFS make less profits from their competitive commercial activity. This, in turn, has a negative effect on the economic viability of the PLAINTIFFS' tobacco operations and, in fact, several MEMBER STATES have had to close down their operations, and/or cut back operations, and/or sell their production and sales facilities. Through their scheme, the RJR DEFENDANTS have acted to unfairly and illegally stifle their competitors, the MEMBER STATES of the EUROPEAN COMMUNITY.

(e.) *Reduction of PLAINTIFFS' Ability to Compete in the United States and Other Markets.* Due to the injuries suffered by the MEMBER STATES of the EUROPEAN COMMUNITY as described in this complaint, these PLAINTIFFS suffered an additional loss in that their ability to compete within the international markets including, but not limited to, the United States of America was reduced. The MEMBER STATES not only produced and distributed cigarettes for domestic consumption, but also for export. These export sales were significant in both volume and value. In that the RJR DEFENDANTS' money-laundering and illegal distribution scheme injured the MEMBER STATES' cigarette manufacturing and distribution entities, as described in this complaint, the MEMBER STATES suffered from a reduced ability to compete in international markets including, but not limited to, the United States. Through their scheme, the RJR DEFENDANTS have acted to unfairly and illegally stifle the MEMBER STATES in their bid for a share of the international cigarette market, including that of the United States.

(f.) *Commercial Losses of the MEMBER STATES.* The RJR DEFENDANTS' money-laundering activities and their related conduct compete against the legal cigarette trade within the MEMBER STATES and in particular compete against the MEMBER STATES that participate in the marketplace as either buyers or sellers of cigarettes. Entities that purchase and sell cigarettes using laundered money enjoy an unfair competitive advantage over legitimate businesses due to favorable exchange rates, lack of government oversight, and other factors favoring the illegitimate trader. Legitimate purchasers, manufacturers, and/or distributors of cigarettes are direct competitors of the money-laundering conspirators. As participants in the marketplace, the MEMBER STATES suffer a direct loss of money and property as a result of this illegal activity.

(g.) *Damage to MEMBER STATES as Manufacturers and Distributors of Cigarettes.* Certain MEMBER STATES possessed and have the exclusive right to import and distribute cigarettes within that MEMBER STATE. These MEMBER STATES have been adversely affected in their business and property as a direct result of the massive money-laundering scheme to convert criminal proceeds into cigarettes, which was designed, implemented, and controlled by the RJR DEFENDANTS. The unfair advantage that the money-laundering scheme afforded to the RJR DEFENDANTS impaired the ability of the MEMBER STATES to compete effectively in their own cigarette markets. As a result, warehouses and other distribution facilities have been closed or otherwise rendered useless, and the MEMBER STATES, as

rightful distributors of cigarettes, lost millions of dollars, both in lost cigarette sales as well as in the costs associated with the closing of factories, discharge of employees, and other measures made necessary by the illegal acts of the RJR DEFENDANTS and their coconspirators.

(h.) *DEFENDANTS' Misuse and Disruption of the Marketplace.* THE EUROPEAN COMMUNITY provides at its expense a marketplace without internal frontiers that inures to the benefit of all commercial enterprises that operate within the borders of THE EUROPEAN COMMUNITY. This marketplace makes the sale of products such as cigarettes easier and more profitable. The money-laundering and other wrongful activities of the RJR DEFENDANTS and their coconspirators make illicit use of this marketplace for their own economic benefit and to the economic detriment of THE EUROPEAN COMMUNITY and the MEMBER STATES. Money laundering and associated wrongdoing disrupt the legitimate trade and markets within THE EUROPEAN COMMUNITY, damage the economic viability of THE EUROPEAN COMMUNITY, and cause harm to the financial institutions and infrastructure within THE EUROPEAN COMMUNITY.

(i.) *Damage to the Legitimate Economy.* The RJR DEFENDANTS' money-laundering scheme and related criminal activities cause a direct and adverse economic impact on THE EUROPEAN COMMUNITY and the MEMBER STATES because this underground economy, in which the RJR DEFENDANTS and their coconspirators play a significant and material role, competes illegally against the legitimate economy of THE EUROPEAN

COMMUNITY and the MEMBER STATES, and thereby causes direct financial loss to the PLAINTIFFS.

(j.) *Damage to THE EUROPEAN COMMUNITY Financial Institutions.* The RJR DEFENDANTS' money-laundering scheme and related criminal activities undermine and damage THE EUROPEAN COMMUNITY'S financial system. The integrity of financial institutions, including banks, is compromised when they are used to launder criminal proceeds. Financial messaging systems such as the SWIFT system, based in Belgium, have been compromised because they have been used on a continuing basis to expedite this money-laundering scheme.

(k.) *Frustration of the Duty to Prevent Harm to Financial Institutions. The* RJR DEFENDANTS' money-laundering scheme and related criminal activities subvert and undermine THE EUROPEAN COMMUNITY'S duties, responsibilities, and legal authority, and specifically inhibit the ability of THE EUROPEAN COMMUNITY to prevent harm to the financial institutions and infrastructure within THE EUROPEAN COMMUNITY.

(l.) *Damage to MEMBER STATES (Bank Failures).* When commercial banks fail wholly or partially as a result of money laundering, the MEMBER STATES sustain direct economic losses because they are often required to protect depositors who are victims of these bank failures.

(m.) *Damage to MEMBER STATE Banks.* Money laundering associated with the cigarette sales described in this Complaint has a direct and adverse

impact on commercial banks owned wholly or partially by certain of the MEMBER STATES. The underground currency exchange and illegal barter transactions associated with money laundering deprive commercial banks of transaction fees and other sources of income associated with the international and/or foreign exchange transactions that are displaced by these money-laundering activities. When commercial banks fail as a result of money laundering, the MEMBER STATES sustain direct economic losses as a result of those failures.

(n.) *Protection of MEMBER STATES' Currency.* When each of the MEMBER STATES issues its currency, the MEMBER STATE acts as a guarantor of the stability of the currency it issues (see, however, the discussion of the Euro at paragraph (o.) below). The MEMBER STATE provides value to the currency by its willingness to maintain the strength and integrity of that currency. When the RJR DEFENDANTS and their coconspirators launder the currency of a MEMBER STATE, they convert and make illicit use of the currency and thereby erode the stability and credibility of that currency, depriving the PLAINTIFFS of money and property.

(o.) *Protection of the Euro.* On January 1, 1999, THE EUROPEAN COMMUNITY created a new currency, the Euro. It is the ultimate duty and responsibility of THE EUROPEAN COMMUNITY and the MEMBER STATES to protect the integrity of the Euro and the public's confidence in the Euro. When the RJR DEFENDANTS and their coconspirators launder the Euro, they convert and make illicit use of the Euro, thereby undermining the integrity of the Euro, as well as public confidence in

the Euro and in financial institutions that are based on the Euro.

(p.) *Devaluation of PLAINTIFFS' Property.* The money-laundering scheme of the RJR DEFENDANTS and their coconspirators involves the exchange of Euros and the currencies of the MEMBER STATES for U.S. dollars often at deeply discounted black-market exchange rates due to the criminal nature of these transactions. The exchange of tens of millions of dollars worth of the PLAINTIFFS' currencies at a deep discount rate acts to devalue the PLAINTIFFS' currencies. Because the PLAINTIFFS hold and own billions of dollars in their own currencies, the PLAINTIFFS suffer a direct loss of money and property when the money that they hold is thus devalued.

(q.) *Distortion of the Money Supply.* The process of laundering criminal proceeds through the purchase and sale of cigarettes involves the unrecorded and irregular physical removal of huge amounts of the Euro and local currency from the territory of the MEMBER STATES. The money-laundering activities of the RJR DEFENDANTS, when they involve an unrecorded and irregular removal of PLAINTIFFS' currencies, act to affect and distort the supply of money in the MEMBER STATES. This distortion directly and adversely affects the official calculations of the money supply performed and maintained by THE EUROPEAN COMMUNITY and the MEMBER STATES, thereby causing additional expenditures of funds by the PLAINTIFFS to detect and compensate for the huge unrecorded and irregular physical removals of PLAINTIFFS' currencies, depriving the PLAINTIFFS of money and property.

(r.) *Balance of Payments.* The process of laundering criminal proceeds through the purchase and sale of U.S.-made cigarettes involves the illegal conversion of Euros and local currency into U.S. dollars outside the facilities provided by THE EUROPEAN COMMUNITY and the MEMBER STATES for this exchange. The money-laundering activities of the RJR DEFENDANTS, when they involve an unrecorded and irregular conversion of the PLAINTIFFS' currencies into U.S. dollars, distort the official balance of payments calculated and maintained by the PLAINTIFFS, thereby causing additional expenditures of funds by the PLAINTIFFS to detect and compensate for the huge unrecorded and irregular foreign exchange operations, depriving the PLAINTIFFS of money and property.

*(s.) Right, Title, and Interest in the Proceeds of Crime.* Under the laws of the MEMBER STATES, the MEMBER STATES possess title in, or have a right to the proceeds of, any criminal activity infringing their interests. This right is a civil right of reparation. The RJR DEFENDANTS' and their coconspirators' schemes as described in this Complaint caused and continue to cause a loss of money and property to THE EUROPEAN COMMUNITY and the MEMBER STATES because, for example, the laundering of the criminal proceeds prevents the MEMBER STATES from collecting the money and property constituting the proceeds of criminal activity, to which right or title has vested in the MEMBER STATES.

*(t.) Right, Title, and Interest in the Instrumentalities of Crime.* Under the laws of the MEMBER STATES, the MEMBER STATES possess title in, or have a right to, any property used in the

commission of a crime infringing their interests, including money and goods and bribes paid to facilitate sales. This right is a civil right of reparation. The RJR DEFENDANTS' money laundering described in this Complaint, for example, causes a loss of business and property to the MEMBER STATES because the laundering of the criminal proceeds prevents the MEMBER STATES from acquiring title in or rights to the instrumentalities used in the commission of criminal activity, which title or right has vested in the MEMBER STATES.

(u.) *Money Laundering Facilitates Organized Crime.* The money-laundering scheme by the RJR DEFENDANTS facilitates organized crime including narcotics trafficking, arms trafficking, and other offenses. THE EUROPEAN COMMUNITY, the MEMBER STATES, and indeed, the United States, are harmed by such conduct. But for the active assistance of the RJR DEFENDANTS, money launderers and criminals could not have carried out and have laundered the proceeds of their criminal activities to the detriment of THE EUROPEAN COMMUNITY and the MEMBER STATES.

(v.) *Costs of Fighting Money Laundering.* The RJR DEFENDANTS' money-laundering scheme and related criminal activities cause direct economic losses to THE EUROPEAN COMMUNITY and the MEMBER STATES in the form of increased expenditures to prevent money laundering, including financial audits, anti-money-laundering protocols, periodic meetings and conferences to address specifically RJR DEFENDANTS' conduct, and other expenditures that are necessitated by such conduct.

(w.) *Costs of Regulating Transactions and Detecting Money Laundering.* Financial institutions in THE EUROPEAN COMMUNITY must train staff in detecting and reporting suspicious transactions and in any event report all transactions over EUR 15,000 to the authorities in the MEMBER STATES. Specially constituted financial intelligence units ("FIU") must then quickly investigate the reported transactions as well as carrying out other investigations into money laundering. As a result, the MEMBER STATES have been injured in their business and property because of the costs to financial institutions of detecting and reporting such transactions and because of the funds and resources required for MEMBER STATES to carry out investigations in order to detect money laundering.

(x.) *Law-Enforcement Costs of Fighting Underlying Criminal Activity.* THE EUROPEAN COMMUNITY and the MEMBER STATES are required to expend large amounts of money on law-enforcement activities to combat the criminal activity that is facilitated by the money laundering and related activities of the RJR DEFENDANTS and their coconspirators. Such criminal activity includes, but is not limited to, narcotics trafficking, weapons trafficking, terrorism, and an array of other organized criminal activities. But for the money-laundering activities of the RJR DEFENDANTS, the efficacy of these crimes would be diminished, the incentive to commit these crimes would be reduced, and the law enforcement and other costs incurred by THE EUROPEAN COMMUNITY and the MEMBER STATES would be accordingly diminished.

(y.) *Damage to EUROPEAN COMMUNITY and MEMBER STATE Property.* The

means employed by the RJR DEFENDANTS and their coconspirators routinely result in damage to or the destruction of property of THE EUROPEAN COMMUNITY or the MEMBER STATES, such as automobiles and vessels. This damage to the PLAINTIFFS' property is foreseeable and anticipated by the RJR DEFENDANTS and their coconspirators, and results in additional expenditures by THE EUROPEAN COMMUNITY and MEMBER STATES to repair and replace the damaged property.

(z.) *Damage to MEMBER STATES for Expenses to Store and Destroy Proceeds of Criminal Activity.* As a result of the massive money-laundering scheme perpetrated by the RJR DEFENDANTS, the Italian Republic, for example, has been required to warehouse, store, and ultimately destroy huge volumes of cigarettes and other property used in the scheme. For example, at one storage facility alone, the Italian Republic was storing two million master cases of cigarettes that were purchased with the proceeds from crime. Often, such cigarettes must be stored for a long period of time because they will serve as evidence in legal actions. Accordingly, the average case of cigarettes seized by law-enforcement authorities in Italy remains in storage approximately six years. The cost to the Italian Republic for the storage of these cigarettes, including warehouse facilities, employees, insurance, and costs associated with the full-time process of destroying cigarettes equals approximately thirteen dollars per master case of cigarettes. Accordingly, the Italian Republic currently spends approximately twenty-six million dollars per year simply to warehouse, store, and destroy seized cigarettes. Of the cigarettes so stored, substantial

percentages are the products of the RJR DEFENDANTS. Other MEMBER STATES currently incur similar costs and resulting losses.

(aa.) *MEMBER STATES' Contributions to EUROPEAN COMMUNITY Expenditures.* The MEMBER STATES have suffered an injury to business and property because they have been required to contribute additional funding to THE EUROPEAN COMMUNITY as a result of the money-laundering activities of the RJR DEFENDANTS and their coconspirators.

(bb.) *MEMBER STATE Local Expenditures to Support EUROPEAN COMMUNITY Action.* The MEMBER STATES have suffered an injury to business and property because they have been required to expend additional funds and resources to support, on a local level, the additional efforts, activities, and expenditures of THE EUROPEAN COMMUNITY due to the money-laundering activities of the RJR DEFENDANTS and their coconspirators.

(cc.) *Distortion of the "Fourth Resource."* Huge volumes of irregular transactions have gone unrecorded due to the RJR DEFENDANTS' money-laundering scheme. This has produced distortions in the system of contributions made by the MEMBER STATES to THE EUROPEAN COMMUNITY. As a result, some MEMBER STATES have suffered injury to their business and property because they have been required to contribute more than their correct share of the "fourth resource." THE EUROPEAN COMMUNITY has been injured in its business and property because increased expenditures of funds and resources are required to detect and compensate for

the distortions produced in the fourth resource contribution assessments produced by the huge money-laundering transactions of the RJR DEFENDANTS and their coconspirators.

(dd.) *Frustration of THE EUROPEAN COMMUNITY'S Duty to Fulfill Its Obligations to the MEMBER STATES.* The money laundering and related criminal activities of the RJR DEFENDANTS and their coconspirators substantially inhibit the capacity of THE EUROPEAN COMMUNITY to execute its duties to regulate foreign commerce; to regulate customs territories, free-trade zones, and customs-bonded warehouses; to regulate transportation into THE EUROPEAN COMMUNITY or within its borders, including the use of the roads; to regulate the free movement of goods within THE EUROPEAN COMMUNITY; to regulate safety and security at sea; to combat money laundering; to protect and promote the economic well being of its citizens; and to abate harm to itself and to the general public within THE EUROPEAN COMMUNITY.

(ee.) *Damage to EUROPEAN COMMUNITY'S Regulation of its Customs Territory.* THE EUROPEAN COMMUNITY has a Customs Territory and a Customs Border separate and apart from the borders of the MEMBER STATES. The violation and permeation of that Border and that Territory by money-laundering activities and the illegal transport of money into and out of THE EUROPEAN COMMUNITY violates the legal rights of THE EUROPEAN COMMUNITY, threatens the safety, security, and well-being of governmental personnel and property within THE EUROPEAN COMMUNITY, and interferes with and damages the

regulatory system and authority of THE EUROPEAN COMMUNITY.

(ff.) *Damage to the MEMBER STATES Regarding Protection of Their Borders.* Each of the MEMBER STATES has a national territory and borders separate and apart from the borders of the other MEMBER STATES and THE EUROPEAN COMMUNITY. The violation and permeation of those borders and that national territory by money-laundering activities and the illegal transport of money into and out of the MEMBER STATES violates the legal rights of the MEMBER STATES, threatens the safety, security, and well-being of governmental personnel and property within the MEMBER STATES, and interferes with and damages the regulatory system and authority of the MEMBER STATES. The MEMBER STATES suffer injury to their money and property from the additional expenditures required to counteract the scheme of the RJR DEFENDANTS and their coconspirators through additional equipment, personnel, border facilities, and other means.

(gg.) *Injury to THE EUROPEAN COMMUNITY and MEMBER STATES Due to RJR DEFENDANTS' Support of Totalitarian Regimes and Terrorist Groups.* Illegal cigarette sales by the RJR DEFENDANTS and their coconspirators into Iraq and other areas resulted in direct financial benefits to totalitarian regimes and to terrorist groups that have caused harm to THE EUROPEAN COMMUNITY and to the MEMBER STATES, including but not limited to destruction of public property, death and/or injury of government personnel, diminished economic productivity,

increased law-enforcement expenses, and other costs associated with combating terrorism.

(hh.) *Damage Caused by Bribery of Public Officials.* Money-laundering activities, bribery of government officials, and other related criminal acts conducted in various countries, have caused severe harm to THE EUROPEAN COMMUNITY and the MEMBER STATES, including but not limited to increased law-enforcement and military expenditures, disruption of public services, expenses to stabilize unstable political situations in Eastern Europe that affect Western Europe, and damage to the trade and the economy of THE EUROPEAN COMMUNITY and the MEMBER STATES.

(ii.) *Expenses and costs incurred to address, remedy, and repair the effects of the RJR DEFENDANTS' money laundering.* The EUROPEAN COMMUNITY and MEMBER STATES have been injured in their business and property because they have been required to incur expenses and costs to address and remedy the money-laundering activities of the RJR DEFENDANTS and the effects thereof. The PLAINTIFFS have suffered economic losses and other damages as a result of the need to address and remedy the money laundering conducted by the RJR DEFENDANTS and the effects thereof. The PLAINTIFFS are entitled to restitution and reimbursement for such losses and damages.

(jj.) *Customs Duties and Taxes.* As a result of the activities of the RJR DEFENDANTS, large amounts of cigarettes have been introduced into THE EUROPEAN COMMUNITY, and the proper duties and taxes have not been paid on the aforesaid cigarettes. As a result of the RJR DEFENDANTS'

wrongful activities, the PLAINTIFFS, THE EUROPEAN COMMUNITY, and the MEMBER SATES, have been deprived of the money and property that they would have obtained from the lawful importation and sale of cigarettes, and RJR DEFENDANTS have secured vast profits and proceeds from their illegal scheme. This money and property includes, but is not limited to the following:

(i.) Customs duties that are levied exclusively for the benefit of THE EUROPEAN COMMUNITY. A portion of said customs duties is retained by the MEMBER STATES pursuant to the own resources decisions of THE EUROPEAN COMMUNITY as ratified by all the MEMBER STATES.

(ii.) Value-added tax levied on cigarettes. This tax is shared between THE EUROPEAN COMMUNITY and its MEMBER STATES.

(iii.) Excise taxes that would have been paid on the cigarettes in question absent the wrongful activities of the RJR DEFENDANTS and their coconspirators.

(iv.) The RJR DEFENDANTS' schemes also harmed THE EUROPEAN COMMUNITY and the MEMBER STATES by supplanting sales of lawfully sold cigarettes on which duties, money, and taxes would have been paid to THE EUROPEAN COMMUNITY and its MEMBER STATES.

147. THE EUROPEAN COMMUNITY and the MEMBER STATES and their economies have suffered losses at least equal to, and properly measured by, the total amount of criminal proceeds

laundered by the RJR DEFENDANTS. These losses were directly and proximately caused by the money-laundering activities of the RJR DEFENDANTS and their coconspirators. THE EUROPEAN COMMUNITY and the MEMBER STATES have the duty and responsibility to protect against, and to seek redress for, such losses.

148. As a direct and proximate result of the money-laundering activities that are conducted, aided, and encouraged by the RJR DEFENDANTS, losses of hundreds of millions of dollars per year are being suffered by THE EUROPEAN COMMUNITY and its MEMBER STATES, including the Republic of Austria, Kingdom of Belgium, Republic of Bulgaria, Republic of Cyprus, Czech Republic, Kingdom of Denmark, Republic of Estonia, Republic of Finland, French Republic, Federal Republic of Germany, Hellenic Republic, Republic of Hungary, Republic of Ireland, Italian Republic, Republic of Latvia, Republic of Lithuania, Grand Duchy of Luxembourg, Republic of Malta, Kingdom of the Netherlands, Republic of Poland, Portuguese Republic, Romania, Slovak Republic, Republic of Slovenia, Kingdom of Spain, and Kingdom of Sweden. THE EUROPEAN COMMUNITY and the MEMBER STATES have been deprived of money and property in this manner throughout the 1990s and continuing through the present time. If the money-laundering activities of the RJR DEFENDANTS are not stopped, THE EUROPEAN COMMUNITY and the MEMBER STATES will continue to lose money and property in the future. In addition, THE EUROPEAN COMMUNITY and the MEMBER STATES have been required to expend large amounts of money in their efforts to stop money laundering and to recoup funds

that they have lost as a result of the activities of the RJR DEFENDANTS.

*Restitution*

149. Restitution at law is available as an alternative remedy to compensatory damages where, as here, a defendant has engaged in deliberate wrongdoing. Under this restitutionary remedy, a defendant who is consciously tortious in acquiring a benefit is deprived of any profit derived from his wrongful action. Plaintiffs hereby seek the legal remedy of restitution, as an alternative remedy to compensatory damages, in order to assure that the most effective and manageable remedy is available to Plaintiffs, and to deter deliberate and wrongful conduct that has conferred illicit profits upon the RJR DEFENDANTS. In connection with Plaintiffs' request for restitution at law, Plaintiffs seek all appropriate ancillary relief, including without limitation an accounting of profits and/or the appointment of a receiver to assist in the determination of the restitution claim.

*Punitive Damages*

150. The organized crime and money-laundering activities undertaken and facilitated by the RJR DEFENDANTS and their coconspirators were performed in a wanton, reckless, and/or malicious manner. In light of the nature and reprehensibility of the RJR DEFENDANTS' and their coconspirators' conduct; the actual or tacit approval of such illicit conduct by senior management of the RJR DEFENDANTS; the actual and potential harm to the public and PLAINTIFFS caused by such conduct; and the financial benefits that accrued to the RJR DEFENDANTS as a result of

such conduct, punitive damages can and should be assessed in an amount to be determined.

*Declaratory Relief*

151. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202, Plaintiffs are entitled to a declaration of the rights and other legal relations between the parties since a case of actual controversy exists. The Federal Declaratory Judgment Act is intended to promote clarification of the legal relations at issue and afford prompt relief from uncertainty and insecurity.

*Injunctive and Other Equitable Relief*

152. All of the losses described above will continue into the future, absent judgment in Plaintiffs' favor and injunctive and equitable relief, including:

*RICO Equitable & Injunctive Relief.*

153. Under the RICO statute, 18 U.S.C. § 1964(a), and pursuant to inherent equitable powers of the Court, the U.S. District Court is empowered to prevent and restrain violations of 18 U.S.C. § 1962 by issuing appropriate orders, including without limitation: (i) ordering any person to divest himself or herself of any interest, direct or indirect, in any enterprise; (ii) imposing reasonable restrictions on the future activities or investments of any person that affect interstate or foreign commerce, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in; and (iii) ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons. In addition, under 28 U.S.C. § 1651(a), the U.S. District Courts are empowered to "issue all writs necessary or

appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." Consistent with these powers, the PLAINTIFFS seek an order that:

(a.) compels each of the RJR DEFENDANTS that is found to have violated the relevant common-law, statutory, or equitable standard to disgorge all proceeds derived from any such violation and to make restitution to Plaintiffs;

(b.) imposes a constructive trust and equitable lien upon the RJR DEFENDANTS' ill-gotten gains, including without limitation those profits and proceeds derived from the transactions with organized crime networks and the money-laundering scheme, and compels the RJR DEFENDANTS to disgorge to Plaintiffs all ill-gotten gains derived from such schemes;

(c.) orders the imposition of a constructive trust and equitable lien upon all monies laundered by the RJR DEFENDANTS as a part of the money-laundering scheme and compels the RJR DEFENDANTS to disgorge to Plaintiffs an amount equal to the total amount of monies laundered through the aforesaid scheme;

(d.) orders divestiture of all interests held by the RJR DEFENDANTS, directly or indirectly, in the enterprises involved in the organized crime and money-laundering activities;

(e.) orders divestiture of REYNOLDS AMERICAN INC.'S interest in the ORIGINAL RJR DEFENDANTS;

(f.) enjoins the RJR DEFENDANTS and their respective agents, servants, officers, directors, employees, and all persons acting in concert with

them, from laundering the proceeds of criminal activities through the sale of cigarettes or otherwise engaging in conduct that violates any common-law, statutory, or equitable standard;

(g.) enjoins the RJR DEFENDANTS and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them from selling cigarettes without proper documentation, shipping records, markings, and similar indicia of compliance with law that would allow the proper tracking of the cigarettes and the funds with which they were purchased so that they cannot be sold illegally;

(h.) enjoins the RJR DEFENDANTS and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them from selling cigarettes to any distributor or any other person who cannot fully and accurately account for where the cigarettes will ultimately be sold;

(i.) enjoins the RJR DEFENDANTS and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them from engaging in any practices by which distributors, shippers, or wholesalers can purchase cigarettes by making payments to offshore corporations, offshore bank accounts, or other locations that limit the ability of government officials to track the sale of cigarettes or the payment for said cigarettes;

(j.) orders the RJR DEFENDANTS to create and utilize adequate protocols by which all cigarettes manufactured by the RJR DEFENDANTS and all payments made for such cigarettes into THE EUROPEAN COMMUNITY can be adequately

tracked and monitored by governmental officials of THE EUROPEAN COMMUNITY and the MEMBER STATES;

(k.) orders the RJR DEFENDANTS to take all reasonable and necessary steps to terminate ongoing money laundering and prevent future money laundering, including the adoption of any necessary labeling, tracking devices, or other means that would allow the RJR DEFENDANTS and/or THE EUROPEAN COMMUNITY and the MEMBER STATES to track and monitor the movement of cigarettes into and within THE EUROPEAN COMMUNITY;

(l.) orders the RJR DEFENDANTS to disclose all knowledge within their possession concerning the names, locations, activities, and procedures of their non-legitimate customers;

(m.) orders the RJR DEFENDANTS to implement "know-your-customer" protocols and rules for the acceptance of payments for their products that make it difficult or impossible for criminals to launder criminal proceeds through the purchase of DEFENDANTS' products;

(n.) orders the RJR DEFENDANTS to adopt, monitor, and enforce appropriate compliance programs to deter and remedy money-laundering activities involving their products;

(o.) orders the RJR DEFENDANTS to abate and prevent conduct that facilitates the misuse of the ports and transportation facilities of the EC and MEMBER STATES, and/or disrupts the marketplace, by their employees and agents engaged in the illegal distribution of tobacco products and the laundering of the proceeds of crime.

154. For purposes of this complaint, all of the foregoing injunctive and equitable remedies and those injunctive and equitable remedies that may hereafter be sought by THE EUROPEAN COMMUNITY and the MEMBER STATES or ordered by the Court with respect to THE EUROPEAN COMMUNITY'S and the MEMBER STATES' claims under RICO shall be referred to as "RICO Equitable & Injunctive Relief."

*Common-Law Equitable & Injunctive Relief.*

155. Under the state and federal common law, and pursuant to the inherent equitable powers of the Court, the U.S. District Court is empowered to prevent and restrain the RJR DEFENDANTS' and their coconspirators' money-laundering activities, enter prohibitory and mandatory injunctions, and impose other equitable relief, to provide full relief to Plaintiffs and to prevent continuing harm to the Plaintiffs' interests. In addition, the federal courts are empowered under 28 U.S.C. § 1651(a) to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." Consistent with these powers, THE EUROPEAN COMMUNITY and the MEMBER STATES seek an order that:

(a.) compels each of the RJR DEFENDANTS that is found to have violated a relevant common-law, statutory, or equitable standard to disgorge all proceeds derived from any such violation and to make restitution to Plaintiffs;

(b.) imposes a constructive trust and equitable lien upon the RJR DEFENDANTS' ill-gotten gains, including without limitation those profits and proceeds derived from the transactions

with organized crime networks and the money-laundering scheme, and compels the DEFENDANTS to disgorge to Plaintiffs all ill-gotten gains derived from such schemes;

(c.) orders the imposition of a constructive trust and equitable lien upon all monies laundered by the RJR DEFENDANTS as a part of the money-laundering scheme and compels the RJR DEFENDANTS to disgorge to Plaintiffs an amount equal to the total amount of monies laundered through the aforesaid scheme;

(d.) orders divestiture of REYNOLDS AMERICAN INC.'S interest in the ORIGINAL RJR DEFENDANTS;

(e.) enjoins the RJR DEFENDANTS and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them, from laundering the proceeds of criminal activities through the sale of cigarettes or otherwise engaging in conduct that violates any common-law, statutory, or equitable standard;

(f.) enjoins the RJR DEFENDANTS and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them from selling cigarettes without proper documentation, shipping records, markings, and similar indicia of compliance with law that would allow the proper tracking of the cigarettes and the funds with which they were purchased so that they cannot be sold illegally;

(g.) enjoins the RJR DEFENDANTS and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them from selling cigarettes to any distributor or any

other person who cannot fully and accurately account for where the cigarettes will ultimately be sold;

(h.) enjoins the RJR DEFENDANTS and their respective agents, servants, officers, directors, employees, and all persons acting in concert with them from engaging in any practices by which distributors, shippers, or wholesalers can purchase cigarettes by making payments to offshore corporations, offshore bank accounts, or other locations that limit the ability of government officials to track the sale of cigarettes or the payment for said cigarettes;

(i.) orders the RJR DEFENDANTS to create and utilize adequate protocols by which all cigarettes manufactured by the RJR DEFENDANTS and all payments made for such cigarettes into THE EUROPEAN COMMUNITY can be adequately tracked and monitored by governmental officials of THE EUROPEAN COMMUNITY and the MEMBER STATES;

(j.) orders the RJR DEFENDANTS to take all reasonable and necessary steps to terminate ongoing money laundering and prevent future money laundering, including the adoption of any necessary labeling, tracking devices, or other means that would allow the DEFENDANTS and/or THE EUROPEAN COMMUNITY and the MEMBER STATES to track and monitor the movement of cigarettes into and within THE EUROPEAN COMMUNITY;

(k.) orders the RJR DEFENDANTS to disclose all knowledge within their possession concerning the names, locations, activities, and procedures of their non-legitimate customers;

(l.) orders the RJR DEFENDANTS to implement "know-your-customer" protocols and rules for the acceptance of payments for their products that make it difficult or impossible for criminals to launder criminal proceeds through the purchase of RJR DEFENDANTS' products;

(m.) orders the RJR DEFENDANTS to adopt, monitor, and enforce appropriate compliance programs to deter and remedy money-laundering activities involving their products; and

(n.) orders the RJR DEFENDANTS to abate and prevent conduct that facilitates the misuse of the ports and transportation facilities of the EC and MEMBER STATES, and/or disrupts the marketplace, by their employees and agents engaged in the illegal distribution of tobacco products and the laundering of the proceeds of crime.

156. For purposes of this complaint, all of the foregoing injunctive and equitable remedies, and those injunctive and equitable remedies that may hereafter be sought by Plaintiffs or ordered by the Court on Plaintiffs' state and federal common-law claims, shall be referred to as "Common-Law Equitable & Injunctive Relief."

**COUNT I**
**MEMBER STATES**
**(AS TO ALL RJR DEFENDANTS)**
**(RICO, 18 U.S.C. § 1962(a))**

157. The MEMBER STATES restate and reallege paragraphs one (1) through one hundred fifty-six (156) and further allege:

158. The RJR DEFENDANTS, along with their coconspirators in the money-laundering

schemes, including associated distributors, shippers, currency dealers, wholesalers, money brokers, and other participants in the schemes identified above, were, at relevant times, an association-in-fact of individuals and corporations engaged in, and the activities of which affected, interstate and foreign commerce, and thus constituted an "enterprise" within the meaning of 18 U.S. C. § 1961(4) (the "RJR Money-Laundering Enterprise"). These persons and entities were and are associated in fact for the purpose, among others, of illegally laundering criminal proceeds of criminal activity to the economic detriment of Plaintiffs. The RJR Money-Laundering Enterprise is an ongoing organization whose constituent elements function as a continuing unit for the common purpose of maximizing the sale of tobacco products through illegal means and carrying out other elements of the RJR DEFENDANTS' scheme. The RJR Money-Laundering Enterprise has an ascertainable structure and purpose beyond the scope of the RJR DEFENDANTS' predicate acts and the conspiracy to commit such acts. The Enterprise has engaged in and its activities have affected interstate and foreign commerce. The Enterprise continues through the concerted activities of the RJR DEFENDANTS to disguise the nature of the wrongdoing, to conceal the proceeds thereof, and to conceal the RJR DEFENDANTS' participation in the Enterprise in order to avoid and/or minimize their exposure to criminal and civil penalties and damages. The role of each DEFENDANT in the RJR Money-Laundering Enterprise has been set forth above.

159. In connection with the fraudulent schemes set forth above, and to further their illegal aims, the RJR DEFENDANTS have engaged in

numerous acts of "racketeering activity," and each of the RJR DEFENDANTS has aided and abetted each other of the RJR DEFENDANTS and other coconspirators in committing those acts of "racketeering activity" within the meaning of RICO. 18 U.S.C. §§ 1961, et seq.; 18 U.S.C. § 2. The RJR DEFENDANTS have committed multiple predicate acts of racketeering including, but not limited to:

(a.) Money Laundering. (18 U.S.C. §§ 1956(a)(l), 1961(1)(B)). Knowing that the property involved in certain financial transactions represented the proceeds of some form of unlawful activity, the RJR DEFENDANTS conducted or attempted to conduct financial transactions in interstate and foreign commerce involving the proceeds of specified unlawful activity with the intent to promote the carrying on of specified unlawful activity; or did so knowing that the transactions were designed in whole or in part to conceal or disguise the nature, the location, the source of ownership, or the control of the proceeds of specified unlawful activity, or did so knowing that the transactions were designed in whole or in part to avoid a transaction-reporting requirement under state or federal law. The RJR DEFENDANTS knew that the funds they received in exchange for cigarettes in the manners set forth in this Complaint represented the proceeds of specified unlawful activity, including without limitation narcotics trafficking, wire fraud, mail fraud, and violations of the Travel Act. The RJR DEFENDANTS also knew that such transactions constituted offenses against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance. The RJR DEFENDANTS knowingly conducted and attempted

to conduct such financial transactions with the intent to promote the carrying on of such unlawful activity. In addition, the RJR DEFENDANTS knowingly conducted and attempted to conduct such financial transactions with the intent to conceal or disguise the nature (proceeds of racketeering activity), the location, the source (drug traffickers, money launderers), the ownership, and/or the control of the proceeds of specified unlawful activity. Finally, the RJR DEFENDANTS knowingly conducted and attempted to conduct such financial transactions to avoid transaction-reporting requirements under state or federal law, including without limitation currency and monetary instrument reports.

(b.) International Money Laundering. (18 U.S.C. §§ 1956(a)(2), 1961(1)(B)). The RJR DEFENDANTS transported, transmitted, and/or transferred monetary instruments or funds to a place in the United States from or through a place outside the United States with the intent to promote the carrying on of specified unlawful activity, or did so knowing that the monetary instruments or funds involved in the transportation, transmission, or transfer represented the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer was designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of a specified unlawful activity, or to avoid a transaction-reporting requirement under state or federal law. By such conduct, the RJR DEFENDANTS engaged in financial transactions within the meaning of 18 U.S.C. § 1956(c)(4). Among other things, the RJR DEFENDANTS knew that money orders and funds sent from South America,

the Caribbean, and Europe to the United States to pay for cigarettes purchased in bulk represented the proceeds of specified unlawful activity, including without limitation wire fraud, mail fraud, and violations of the Travel Act. The RJR DEFENDANTS also knew that such specified unlawful activity was an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance. The RJR DEFENDANTS also aided and abetted violations of 18 U.S.C. § 1956(a)(l) and § 1956(a)(2).

(c.) Conspiracy to Engage in Money Laundering. 18 U.S.C. §§ 1956(h), 1961(1)). The RJR DEFENDANTS conspired to commit offenses defined in 18 U.S.C. § 1956 — including § 1956(a)(l) and § 1956(a)(2). The RJR DEFENDANTS, by their words and actions, agreed to accept currency, monetary instruments, and funds with the knowledge that the currency, monetary instruments, and funds represented the proceeds of specified unlawful activity conducted by themselves and their coconspirators. The RJR DEFENDANTS adopted the common purpose of the conspiracy and participated in its consummation. The goal of the money-laundering conspiracy was to deprive Plaintiffs of money and property, while assuring that the profits derived from cigarette sales were repatriated to the benefit of the RJR DEFENDANTS in a clandestine manner to avoid detection and prosecution.

(d.) Money Laundering (18 U.S.C. §§ 1957, 1961(1)). DEFENDANTS knowingly engaged or attempted to engage in monetary transactions in the United States, in criminally derived property having a value greater than $10,000 and derived from specified unlawful activity. 18 U.S.C. § 1957(f)(3)

and § 1956(c)(7). DEFENDANTS engaged in monetary transactions, including deposits, withdrawals, transfers, or exchanges, in or affecting interstate or foreign commerce, involving funds or monetary instruments by, through, or to financial institutions. DEFENDANTS knew that the funds or instruments received in exchange for their cigarettes represented the proceeds of specified unlawful activity, including but not limited to, wire fraud, mail fraud, and violations of the Travel Act. The RJR DEFENDANTS knew that such specified unlawful activity included offenses against foreign nations involving the manufacture, importation, sale, or distribution of controlled substances.

(e.) Money Laundering of Proceeds of Offenses against Foreign Nations. (18 U.S.C. § 1956(c)(7)(B)(vi); 18 U.S.C. § 1961(1)(B)). The RJR DEFENDANTS, knowing that the property involved in a financial transaction represented the proceeds of some form of unlawful activity, conducted or attempted to conduct financial transactions in interstate and foreign commerce involving the proceeds of specified unlawful activity with the intent to promote the carrying on of specified unlawful activity; or did so knowing that the transactions were designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or did so knowing that the transactions were designed in whole or in part to avoid transaction-reporting requirements under state or federal law. The RJR DEFENDANTS knew that the proceeds of transactions with narcotics traffickers, participants in organized crime, money launderers, and others engaged in criminal conduct represented the proceeds

of specified unlawful activity, including without limitation offenses with respect to which the United States would be obligated by a multilateral treaty either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States. Specifically, the RJR DEFENDANTS laundered the proceeds of offenses that are subject to multilateral treaties, including without limitation the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), and the International Convention for the Suppression of the Financing of Terrorism (2001), and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (adopted November 21, 1997, entered into force in the United States February 15, 1999).

(i.) The RJR DEFENDANTS have laundered the proceeds of various offenses covered by the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, including, for example: (i) the conversion or transfer of property, knowing that such property is derived from narcotics trafficking, or from an act of participation in such offense or offenses, for the purpose of concealing or disguising the illicit origin of the property or of assisting persons involved in the commission of such an offense or offenses to evade the legal consequences of their actions; (ii) the financing of narcotics trafficking; (iii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from narcotics trafficking or from an act of participation in such an offense or offenses;

(iv) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from narcotics trafficking or from an act of participation in such offense or offenses; and (v) participation in, association or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating, and concealing the commission of acts of narcotics trafficking.

(ii.) The DEFENDANTS have laundered the proceeds of various offenses covered by the International Convention for the Suppression of the Financing of Terrorism (2001), including, for example, providing material support and resources to persons and entities engaged in terrorist activities, and providing assets, including products and services, to those persons and entities, acting with knowledge that such persons and entities, including without limitation the PKK and the former Iraqi regime, were engaged in terrorism or the sponsorship of terrorist activities. Such persons and entities that engage in terrorist activity are so tainted by their criminal conduct that providing any assets, material support, or resources to any of them facilitates such terrorist activities.

(iii.) The DEFENDANTS have laundered, and conspired to launder, the proceeds of various offenses covered by the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (adopted November 21, 1997, entered into force in the United States February 15, 1999), including for example the proceeds of transactions obtained or continued as a consequence of payments, direct and indirect, to foreign public officials. As alleged above, DEFENDANTS made payments or provided things of

value to foreign public officials, retained or obtained business as a result of such payments, and laundered the proceeds of those transactions, often through venues known for bank secrecy.

(f.) Money Laundering of Proceeds of Terrorism. (18 U.S.C. § 1956(c)(7)(D); 18 U.S.C. § 1961(1)(B); 18 U.S.C. § 1961(1)(G)). The RJR DEFENDANTS, knowing that the property involved in a financial transaction represented the proceeds of some form of unlawful activity, conducted or attempted to conduct financial transactions in interstate and foreign commerce involving the proceeds of specified unlawful activity with the intent to promote the carrying on of specified unlawful activity; or did so knowing that the transaction was designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or did so knowing that the transaction was designed in whole or in part to avoid a transaction-reporting requirement under state or federal law. DEFENDANTS knew that the proceeds of transactions with persons and entities engaged in terrorism represented the proceeds of specified unlawful activity, including but not limited to acts of terrorism.

(g.) Money Laundering of Proceeds of Offenses Against a Foreign Nation Involving Narcotics Trafficking. (18 U.S.C. § 1956(c)(7)(B); 18 U.S.C. § 1961(1)(B)). Knowing that the property involved in a financial transaction represented the proceeds of some form of unlawful activity, the RJR DEFENDANTS conducted or attempted to conduct financial transactions in interstate and foreign commerce involving the proceeds of specified

unlawful activity with the intent to promote the carrying on of specified unlawful activity; or did so knowing that the transaction was designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or did so knowing that the transaction was designed in whole or in part to avoid transaction-reporting requirements under state or federal law. The RJR DEFENDANTS knew that the proceeds of transactions with narcotics traffickers, money launderers, and others engaged in criminal activity represented the proceeds of specified unlawful activity, including an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance.

(h.) Money Laundering of Proceeds of Offenses Against a Foreign Nation Involving a Scheme to Defraud Foreign Banks. (18 U.S.C. § 1956(c)(7)(B)(iii); 18 U.S.C. § 1961(1)(B)). The DEFENDANTS, knowing that the property involved in a financial transaction represented the proceeds of some form of unlawful activity, conducted or attempted to conduct financial transactions in interstate and foreign commerce involving the proceeds of specified unlawful activity with the intent to promote the carrying on of specified unlawful activity; or, knowing that the transaction was designed in whole or in part to conceal or disguise the nature, the location, the source of ownership, or the control of the proceeds of specified unlawful activity, or knowing that the transaction was designed in whole or in part to avoid a transaction-reporting requirement under state or federal law. DEFENDANTS engaged in and facilitated financial

transactions and acts of money laundering that deprived foreign banks, including those belonging to Plaintiffs, of money and property that would have been paid to such banks through the lawful transaction of business. DEFENDANTS knowingly engaged in financial transactions designed to launder the proceeds of fraud, or a scheme or attempt to defraud, foreign banks belonging to Plaintiffs.

(i.) Money Laundering of Proceeds of Violations of Foreign Corrupt Practices Act. (18 U.S.C. § 1956(c)(7)(D); 18 U.S.C. § 1961(1)(B)). In general, the Foreign Corrupt Practices Act (FCPA) makes it unlawful for DEFENDANTS, or any officer, director, employee, or agent thereof, to pay or promise to pay money or any thing of value to any foreign official for purposes of influencing any act or decision of the foreign official in his or her official capacity, inducing such official to do or omit to do any act in violation of the lawful duty of such official, or securing any improper advantage, or inducing such foreign official to use his or her influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist DEFENDANTS in obtaining or retaining business for or with, or directing business to, any person. "Foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of such entities.

The DEFENDANTS, acting through intermediaries, provided money or things of value to foreign officials to obstruct oversight of DEFENDANTS' conduct, preclude discovery of their

involvement in money laundering and other criminality, and thereby permit their business to continue. The DEFENDANTS, knowing that the property involved in a financial transaction represented the proceeds of some form of unlawful activity, conducted or attempted to conduct financial transactions in interstate and foreign commerce involving the proceeds of specified unlawful activity with the intent to promote the carrying on of specified unlawful activity; or, knowing that the transaction was designed in whole or in part to conceal or disguise the nature, the location, the source of ownership, or the control of the proceeds of specified unlawful activity, or knowing that the transaction was designed in whole or in part to avoid a transaction-reporting requirement under state or federal law.

(j.) Providing Material Support or Resources to Designated Foreign Terrorist Organizations. (18 U.S.C. § 2339(B) and 18 U.S.C. § 1961(1)(G)). As from June 1999 and continuing until at least 2002 in the United States and elsewhere, the RJR DEFENDANTS and their agents with each other and with others known and unknown, did knowingly provide, conspire to provide, and aid and abet others in providing, material support or resources to the PKK, a designated FTO, in violation of 18 U.S.C. § 2339(B). The object of the conspiracy was to provide funds, goods, services, and other assets to the PKK, which caused the DEFENDANTS' cigarette shipments to be sent into Iraq and financed the PKK's terrorist activities and operations.

(k.) Wire fraud and mail fraud. (18 U.S.C. §§ 1341, 1343, 1961(1)(B)). The RJR DEFENDANTS devised a scheme or artifice to defraud and/or to

obtain money by means of false pretenses, representations, or promises, and used the mails and wires for the purpose of executing the scheme, and acted with a specific intent to defraud by devising, participating in, and/or abetting the scheme. The wire and mail communications were made during the course of the conspiracy that covered at least 2002 through 2009. Hundreds of telephone conversations and faxes were made to further the fraudulent scheme on virtually a daily basis during the course of the conspiracy, including without limitation those identified in paragraphs 53, 66, 75-79, 104-108, 109-111, 112-113, and others. These telephone conversations, mailings, and wire transfer of funds furthered the scheme by expediting the secret payments to the RJR DEFENDANTS of funds that constituted the proceeds of criminal activity and were part of a clandestine system for the remittance of such proceeds to the RJR DEFENDANTS. The RJR DEFENDANTS, acting through their employees, agents, and coconspirators, made or caused to be made such telephone calls, mailings, and wire transfers of funds to further the scheme. The RJR DEFENDANTS knew that their coconspirators, in the course of carrying out the RJR DEFENDANTS' directions and orders, would use or cause to be used the interstate and international wires and mails. The motive for committing fraud is plain: the acquisition of criminals as additional customers by laundering their criminal proceeds meant increased profits and market share for the RJR DEFENDANTS.

(l.) Violation of the Travel Act. (18 U.S.C. §§ 1952, 1961(1)(B)). The RJR DEFENDANTS traveled in interstate or foreign commerce, and used facilities in interstate and foreign commerce,

including the mail, with intent to distribute the proceeds of unlawful activity, and to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of unlawful activity, and thereafter performed or attempted to perform unlawful activity. The RJR DEFENDANTS knew that the funds provided to them represented the proceeds of unlawful activity, including trafficking in narcotics and controlled substances, and knew that, by accepting such payments, they aided the efforts of the drug traffickers to launder their ill-gotten gains. The RJR DEFENDANTS and their representatives and coconspirators traveled across national borders and otherwise used the facilities of foreign commerce to distribute the proceeds of unlawful activity to the benefit of the RJR DEFENDANTS. By this conduct, the RJR DEFENDANTS promoted, managed, established, and facilitated such unlawful activity.

160. The acts described above form a "pattern" of racketeering activity within 18 U.S.C. § 1961(5). The DEFENDANTS and others with whom they have been associated have been related in their common objectives of maximizing global cigarette sales and utilizing money laundering to achieve this end. The DEFENDANTS' predicate acts have had the same or similar purposes, results, participants, victims, and methods of commission, and occurred over at least a six-year period. The predicate acts have been consistently repeated and are capable of further repetition.

161. The DEFENDANTS' pattern of racketeering activities dates from at least January 1, 2002, through the present and threatens to continue in the future.

162. The RJR DEFENDANTS used or invested, directly or indirectly, racketeering income, or a part thereof, or the proceeds of such income, to acquire an interest in, establish, and operate, the RJR Money-Laundering Enterprise, which is and was engaged in, or the activities of which affect and have affected, interstate or foreign commerce, in violation of 18 U.S.C. § 1962(a). The RJR DEFENDANTS were principals in the racketeering scheme. The MEMBER STATES suffered multiple injuries to their economic interests as a result of this use and investment of racketeering income.

163. Specifically, the RJR DEFENDANTS received the income and proceeds of a pattern of racketeering activity in which they participated as principals, including an international money-laundering scheme, acts of wire fraud and mail fraud, and violations of the Travel Act. Upon their receipt of such ill-gotten gains by wire transfers from money launderers and/or their associates, the RJR DEFENDANTS used and invested such income and proceeds, or a portion thereof, to acquire an interest in, establish, and operate the RJR Money-Laundering Enterprise, which was and is engaged in interstate and foreign commerce. In particular, the RJR DEFENDANTS used the proceeds of the scheme: (a) to operate the RJR Money-Laundering Enterprise; (b) to replenish the supply of cigarettes for ultimate sale to known money launderers; (c) to acquire, purchase, and subsidize facilities necessary to the RJR Money-Laundering Enterprise, including sales, distribution, and manufacturing operations (e.g., its Puerto Rico plant), secret offices, and offshore companies and bank accounts; (d) to compensate employees and agents of the RJR DEFENDANTS engaged in the

money-laundering activities; (e) to pay expenses incurred in connection with money-laundering activities such as telephone bills incurred in the wire-fraud scheme and travel costs incurred by such employees; and (f) to establish a money-laundering scheme, infrastructure, and network. In sum, the RJR DEFENDANTS did not reinvest the proceeds of racketeering activity in their general business operations, but instead used and invested such proceeds to establish the infrastructure of, acquire an interest in, and operate the RJR Money-Laundering Enterprise, and it was this use and investment that harmed the MEMBER STATES. The use and investment of the proceeds of racketeering activity occurred in several ways, including but not limited to the following:

(a.) The proceeds from the money-laundering enterprise finance the unlawful sales and marketing operations that promote the increase of sales in succeeding years.

(b.) The increased market volume and premium prices charged to money-laundering customers are utilized to offset the additional expenses incurred by the DEFENDANTS when they pay for the additional shipping and handling charges associated with the clandestine movement of the cigarettes through the circuitous routes established by the DEFENDANTS.

(c.) The RJR DEFENDANTS built up and fostered clandestine relationships with money brokers and money-laundering organizations throughout the world, including THE EUROPEAN COMMUNITY and the MEMBER STATES, which solidified and strengthened those brokers and

organizations and enabled them to engage in other criminal conduct.

164. The MEMBER STATES were injured in their business and property by reason of the RJR DEFENDANTS' use and investment of racketeering income to acquire, establish, and operate the RJR Money-Laundering Enterprise. Absent this use and investment of racketeering income, the criminals who launder their criminal proceeds through the purchase of cigarettes would find their crimes less profitable and more difficult to commit, and the economic injury to the MEMBER STATES would have been avoided in whole or in part.

165. As a direct and proximate result of the violations set forth above, the Plaintiffs, the MEMBER STATES, have been injured in their business and property as set forth more fully above in paragraphs one hundred forty-four (144) through one hundred forty-nine (149). The DEFENDANTS' violations of 18 U.S.C. § 1962(a) caused these losses. Under the provisions of 18 U.S.C. § 1964(c), the MEMBER STATES are entitled to bring this action and recover herein treble damages, the costs of bringing the suit, pre-judgment interest, and reasonable attorneys' fees. Furthermore, the Plaintiffs seek a declaratory judgment in their favor pursuant to 28 U.S.C. § 2201(a).

**COUNT II**

**MEMBER STATES**

**(AS TO ALL RJR DEFENDANTS)**
**(RICO, 18 U.S.C. § 1962(b))**

166. The MEMBER STATES restate and reallege paragraphs one (1) through one hundred sixty-five (165) and further allege:

167. The RJR DEFENDANTS acquired or maintained, directly or indirectly, through a pattern of racketeering activity, an interest in and control of the RJR Money- Laundering Enterprise, which was and is engaged in, or the activities of which affect and have affected, interstate or foreign commerce in violation of 18 U.S.C. § 1962(b). The Plaintiffs, the MEMBER STATES, have been injured by the DEFENDANTS' acquisition and maintenance of an interest in and control of the enterprise through a pattern of racketeering activity.

168. The DEFENDANTS, through a pattern of racketeering activity, acquired or maintained, directly or indirectly, an interest in and control of the RJR Money-Laundering Enterprise that engaged in the activities which affect interstate and foreign commerce. Specifically, the RJR DEFENDANTS maintained control of the RJR Money-Laundering Enterprise by means of racketeering activities, including, for example: (a) interstate and international wire communications in violation of 18 U.S.C. § 1343 (orders and instructions for payment were placed telephonically and RJR had total control over the enterprise and the payment for their product); (b) money laundering in violation of 18 U.S.C. §§ 1956 and 1957 (RJR controlled and concealed the flow of the proceeds of the cigarette sales — a key aim of the scheme — through money laundering); and (c) violations of the Travel Act, 18 U.S.C. § 1952 (cross-border travel and transactions to facilitate money laundering and other illicit activities). Through this pattern of racketeering activities, which also included transmitting false statements to government authorities, the RJR DEFENDANTS were able to acquire and maintain an

interest in and control of the RJR Money-Laundering Enterprise. This interest and control furthered, concealed, and protected the operations of the money-laundering enterprise, and thereby permitted the RJR Money-Laundering Enterprise to flourish without detection.

169. As a direct and proximate result of the DEFENDANTS' acquisition and maintenance of an interest in and control of the RJR Money-Laundering Enterprise, the Plaintiffs, the MEMBER STATES, have suffered the loss of money and property as set forth more fully above in paragraphs one hundred forty-four (144) through one hundred forty-nine (149). The DEFENDANTS' violations of 18 U.S.C. § 1962(b) caused these losses. Under the provisions of 18 U.S.C. § 1964(c), the MEMBER STATES are entitled to bring this action and recover herein treble damages, the costs of bringing the suit, pre-judgment interest, and reasonable attorneys' fees. Furthermore, the Plaintiffs seek a declaratory judgment in their favor pursuant to 28 U.S.C. § 2201(a).

## COUNT III

## MEMBER STATES

## (AS TO ALL RJR DEFENDANTS) (RICO, 18 U.S.C. § 1962(c))

170. The MEMBER STATES restate and reallege paragraphs one (1) through one hundred sixty-nine (169) and further allege.

171. The RJR DEFENDANTS, through the commission of two or more acts constituting a pattern of racketeering activity, directly or indirectly participated in the operation or management of the

RJR Money-Laundering Enterprise, the activities of which affect interstate or foreign commerce.

172. At all relevant times, the RJR DEFENDANTS participated in the operation or management of an "enterprise," within the meaning of 18 U.S.C. § 1961(4). The RJR DEFENDANTS, operating together and individually, directed and controlled the RJR Money-Laundering Enterprise. The RJR DEFENDANTS operated, managed, and exercised control over the money-laundering enterprise by, among other things: (a) establishing a money-laundering scheme in which the coconspirators facilitated the money-laundering scheme and concealed and remitted to the RJR DEFENDANTS the proceeds of the money-laundering scheme; (b) compelling their customers to sell cigarettes at prices set by the RJR DEFENDANTS; and (c) investing and using the proceeds of the money-laundering scheme in the enterprise.

173. As a direct and proximate result of the violations set forth above, the Plaintiffs, the MEMBER STATES, have been injured in their business and property as set forth more fully above in paragraphs one hundred forty-four (144) through one hundred forty-nine (149). The RJR DEFENDANTS' violations of 18 U.S.C. § 1962(c) caused these losses. Under the provisions of 18 U.S.C. § 1964(c), the MEMBER STATES are entitled to bring this action and recover herein treble damages, the costs of bringing the suit, pre-judgment interest, and reasonable attorneys' fees. Furthermore, the Plaintiffs seek a declaratory judgment in their favor pursuant to 28 U.S.C. § 2201(a).

## COUNT IV

## MEMBER STATES

## (AS TO ALL RJR DEFENDANTS)
## (RICO, 18 U.S.C. § 1962(d))

174. The MEMBER STATES restate and reallege paragraphs one (1) through one hundred seventy-three (173) and further allege:

175. The RJR DEFENDANTS entered into an agreement with each other and with distributors, shippers, currency dealers, and wholesalers to join in the conspiracy to violate 18 U.S.C. §§ 1962(a), 1962(b), and 1962(c). Each RJR DEFENDANT entered into an agreement to join the conspiracy, and undertook acts in the furtherance of the conspiracy and knowingly participated in the conspiracy. The purpose of the conspiracy was to acquire and service new customers by laundering the proceeds of their criminal activity to the economic detriment of Plaintiffs and to the economic benefit of the RJR DEFENDANTS. The conspirators carried out the scheme and each conspirator was put on notice of the general nature of the conspiracy, that the conspiracy extended beyond the individual role of any single member, and that the conspiratorial venture functioned as a continuing unit for a common purpose. The RJR DEFENDANTS adopted the goal of furthering and facilitating the criminal endeavor. Their stake in the money-laundering venture was in making profits and increasing market share through their informed and interested cooperation with their criminal customers, and their active assistance, stimulation, and instigation of the money-laundering activities. The RJR DEFENDANTS engaged in an actionable wrong, committed jointly with their

coconspirators, and the acts of each member of the conspiracy are imputed to the others because of their common purpose and intent. The RJR DEFENDANTS, acting with their coconspirators, engaged in common action for a common purpose by common agreement and understanding among the group, and are subject to common responsibility.

176. The RJR DEFENDANTS, together with each member of the conspiracy, agreed and conspired to violate: (1) 18 U.S.C. § 1962(a) by using, or causing the use of, income they derived from the above-described pattern of racketeering activities in the acquisition, establishment, and/or operation of the enterprise, the activities of which affect interstate or foreign commerce; (2) 18 U.S.C. § 1962(b) by acquiring or maintaining, or causing the acquisition or maintenance of, through a pattern of racketeering activity, an interest or control in the enterprise, the activities of which affect interstate or foreign commerce; (3) 18 U.S.C. § 1962(c) by participating, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity, including an agreement that the conspirators, or one of them, would commit or cause the commission of two or more racketeering acts constituting such a pattern; and (4) violating the USA Patriot Act.

177. The RJR DEFENDANTS participated in and cooperated with each other and with their coconspirators in the aforementioned conspiracy that enabled each cigarette manufacturer and distributor to enhance its market share, suppress its competition, and promote sale of its products.

178. As a result of the conspiracy, the RJR DEFENDANTS and their coconspirators facilitated the laundering of large volumes of money that constituted the proceeds of criminal activity.

179. The membership of the conspiracy in question includes the RJR DEFENDANTS and tobacco distributors, the shippers, the wholesalers, currency brokers, and the RJR DEFENDANTS' subsidiary corporations, who act in concert to produce the cigarettes, mislabel or fail to properly label the cigarettes, sell the cigarettes, and arrange for payment in a way that is undetectable by governmental authorities, with said payments ultimately being returned to the RJR DEFENDANTS in the United States. As coconspirators, the RJR DEFENDANTS are liable for all of the actions committed by all of the coconspirators within the conspiracy and are liable for all of the damages sustained by the MEMBER STATES that were caused by any members of the conspiracy, regardless of whether the RJR DEFENDANTS were themselves directly involved in a particular aspect of the enterprise.

180. As a direct and proximate result of the violations set forth above, the Plaintiffs, the MEMBER STATES, have been injured in their business and property as set forth more fully above in paragraphs one hundred forty-four (144) through one hundred forty- nine (149). The RJR DEFENDANTS' violations of 18 U.S.C. § 1962(d) caused these losses. Under the provisions of 18 U.S.C. § 1964(c), the MEMBER STATES are entitled to bring this action and recover herein treble damages, the costs of bringing the suit, pre-judgment interest, and reasonable attorneys' fees. Furthermore, the

Plaintiffs seek a declaratory judgment in their favor pursuant to 28 U.S.C. § 2201(a).

**COUNT V**

**MEMBER STATES**

**(AS TO ALL RJR DEFENDANTS)**
**(RICO, 18 U.S.C. §§ 1964(a), 1964(c), 28 U.S.C. § 1651(a))**

181. The MEMBER STATES restate and reallege paragraphs one (1) through one hundred eighty (180) and further allege:

182. The United States District Court is empowered to prevent and restrain violations of 18 U.S.C. § 1962 by issuing appropriate orders, including, but not limited to: ordering any person to divest himself or herself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor in which the enterprise engaged, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons. 18 U.S.C. § 1964(a).

183. The RJR DEFENDANTS currently are actively engaged in the activities set forth within this complaint that promote and support the money laundering that is the subject matter of this complaint.

184. The RJR DEFENDANTS intend to continue said activities and to interfere with investigations by governmental officials into the RJR

DEFENDANTS' and their coconspirators' money-laundering activities.

185. The RJR DEFENDANTS, by their conduct of selling cigarettes to money launderers, creating false and misleading documents, improperly labeling shipments of cigarettes, and establishing and employing mechanisms of payment by which criminals may pay for the cigarettes without being detected by government investigations, all continue to injure the MEMBER STATES.

186. As a result of the RJR DEFENDANTS' conduct in violation of 18 U.S.C. §§ 1962(a), 1962(b), 1962(c), and 1962(d), the MEMBER STATES have been and continue to be irreparably injured as is alleged more fully above.

187. As a result of the nature of the money-laundering activities, it is impossible, as a practical matter, for the MEMBER STATES to put a complete halt to said money-laundering activities as long as the RJR DEFENDANTS continue to conduct these activities. In addition, the MEMBER STATES have suffered and will continue to suffer injury, to business and property to an extraordinary degree as a result of the RJR DEFENDANTS' unlawful conduct.

188. Money damages will not provide a full and complete remedy for the RJR DEFENDANTS' unlawful conduct. There is no adequate remedy at law that will protect the MEMBER STATES in the future from these money-laundering activities if the RJR DEFENDANTS do not cease their involvement in and support of money-laundering activities. Pursuant to 18 U.S.C. §§ 1964(a), 1964(c), as well as 28 U.S.C. § 1651(a), the MEMBER STATES demand full RICO Injunctive and Equitable Relief.

Furthermore, the Plaintiffs seek a declaratory judgment in their favor pursuant to 28 U.S.C. § 2201(a).

## COUNT VI

## EUROPEAN COMMUNITY AND MEMBER STATES

## (AS TO ALL RJR DEFENDANTS) (COMMON-LAW FRAUD)

189. Plaintiffs restate and reallege paragraphs one (1) through one hundred eighty-eight (188) and further allege:

190. The RJR DEFENDANTS and their coconspirators intentionally falsified documents, falsified shipping records, and generated false and misleading billing records concerning the payment for cigarettes so as to mislead the Plaintiffs, THE EUROPEAN COMMUNITY and the MEMBER STATES, as to the purchasers of and source of funds for payment for their cigarettes. The RJR DEFENDANTS and their coconspirators made these false and material statements and representations and failed to disclose material information in such documents and records with intent to defraud the Plaintiffs. The RJR DEFENDANTS made these material misrepresentations and omissions with the knowledge and intention that the Plaintiffs, THE EUROPEAN COMMUNITY and the MEMBER STATES, would reasonably rely on said documents. The RJR DEFENDANTS entered into an understanding or agreement, express or tacit, with their distributors, customers, agents, consultants, and other coconspirators, to participate in a common scheme, plan, or design to commit the aforesaid tortious acts, and thereby launder criminal proceeds

to the detriment of THE EUROPEAN COMMUNITY and the MEMBER STATES. In pursuance of the agreement, the RJR DEFENDANTS and their distributors, customers, agents, consultants, and other coconspirators acted tortiously by, among other things, committing the aforesaid acts constituting fraud, thereby causing harm to Plaintiffs. The RJR DEFENDANTS, through agreement and joint action with their coconspirators, acted tortiously, recklessly, and unlawfully to the detriment of Plaintiffs. By means of the aforesaid concerted action, the RJR DEFENDANTS and their coconspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein.

191. Plaintiffs reasonably relied upon the RJR DEFENDANTS' misrepresentations, and incurred damage as a result of such reliance. Specific examples of the process by which these activities occurred are set forth above.

192. The Plaintiffs, THE EUROPEAN COMMUNITY and the MEMBER STATES, reasonably relied upon falsified or misleading documents produced or procured by the RJR DEFENDANTS, and were thereby misled in the course of performing their duty to fight against money laundering and related criminal activity.

193. Furthermore, the RJR DEFENDANTS knowingly and intentionally generated false, misleading, and material information, and intentionally concealed other material information, concerning their role in money laundering in connection with the sale of their products.

194. The Plaintiffs, THE EUROPEAN COMMUNITY and the MEMBER STATES,

reasonably relied upon data and information provided to them by the RJR DEFENDANTS and/or their coconspirators and agents in acting or refraining from acting with respect to money-laundering activities.

195. The RJR DEFENDANTS, in falsifying documents to expedite money laundering, in providing misleading information, and in concealing material and true information concerning their money-laundering activities, acted in willful, wanton, gross, and callous disregard for the rights of the Plaintiffs, THE EUROPEAN COMMUNITY and the MEMBER STATES. The aforesaid actions were taken knowingly for the purpose of supporting the activities of the RJR DEFENDANTS' coconspirators and with the intent of increasing the profits and sales of the RJR DEFENDANTS and harming THE EUROPEAN COMMUNITY and the MEMBER STATES.

196. RJR DEFENDANTS were duty-bound to disclose the material information concerning the destination of tobacco shipments and the concealed sources of funds used to purchase cigarettes. By law, no person may make false statements to the government. Having undertaken to make representations to THE EUROPEAN COMMUNITY and the MEMBER STATES, DEFENDANTS were obligated to provide full, complete, and truthful information concerning the destination of tobacco shipments and the sources of funds to purchase their products. RJR DEFENDANTS had superior, if not exclusive, knowledge of such information, and it was not readily available to the Plaintiffs. RJR DEFENDANTS intended and knew, or should have known, that Plaintiffs would reasonably rely, act, and

refrain from acting, on the basis of false and/or incomplete information provided to Plaintiffs by RJR DEFENDANTS, and Plaintiffs did so to their detriment. Under these circumstances, RJR DEFENDANTS' conduct amounts to fraudulent misrepresentation and fraudulent concealment, and an effective conversion of Plaintiffs' money and property.

197. As a direct and proximate result of the RJR DEFENDANTS' fraud and the Plaintiffs' reliance upon said fraud, the Plaintiffs have been injured as are set forth more fully above in paragraphs one hundred forty-four (144) through one hundred forty-nine (149). The Plaintiffs demand judgment for damages, both compensatory and punitive, as well as full Common-Law Injunctive and Equitable Relief. Furthermore, the Plaintiffs seek a declaratory judgment in their favor pursuant to 28 U.S.C. § 2201(a).

## COUNT VII

## EUROPEAN COMMUNITY AND MEMBER STATES

## (AS TO ALL RJR DEFENDANTS) (PUBLIC NUISANCE — DAMAGES)

198. Plaintiffs restate and reallege paragraphs one (1) through one hundred ninety-seven (197) and further allege:

199. Plaintiffs are governmental authorities.

200. Money laundering and related illicit activities are a violation of U.S. law and a public nuisance.

201. The money-laundering activities in the United States and THE EUROPEAN COMMUNITY

of the RJR DEFENDANTS: (a) have substantially and unreasonably interfered with, offended, injured and endangered, and continue to interfere with, offend, injure and endanger, the public health, morals, safety, convenience, and well-being of the general public, the financial infrastructure of THE EUROPEAN COMMUNITY, and the operation of the market for tobacco products in THE EUROPEAN COMMUNITY and the MEMBER STATES and have interfered with and endangered the Customs Territory, Customs Border, and free market which THE EUROPEAN COMMUNITY is bound to protect; (b) constitute conduct that is proscribed by applicable laws, administrative regulations, and directives; (c) constitute conduct of a continuing nature and/or have produced a permanent or long-lasting effect, and the DEFENDANTS know or should know that said conduct has a significant harmful effect upon the public right.

202. The money-laundering activities of the RJR DEFENDANTS in the United States, THE EUROPEAN COMMUNITY, and the MEMBER STATES have been, and continue to be, effectuated through widespread criminal activity, including mail fraud, wire fraud, and other illegal acts.

203. The RJR DEFENDANTS facilitated the laundering of criminal proceeds by means of a variety of acts and omissions conducted in or directed from the United States, including the following: (a) The RJR DEFENDANTS laundered criminal proceeds by covertly receiving funds that they knew or should have known were the proceeds of criminal acts and took steps to conceal the source and nature of the criminal proceeds, (b) The RJR DEFENDANTS arranged a process by which cigarettes purchased by

criminals could be paid for by secret payments into offshore corporations and/or offshore bank accounts so as to conceal revenues derived from criminal activities, (c) The RJR DEFENDANTS filed or caused the filing with THE EUROPEAN COMMUNITY and/or the MEMBER STATES of false and fraudulent documents that misstated the value of, the intended destination of, and the source of funds for the purchase of cigarettes that were placed within customs-bonded warehouses and/or free-trade zones within THE EUROPEAN COMMUNITY, (d) The RJR DEFENDANTS sold large volumes of U.S.-made cigarettes into Iraq in violation of U.S. laws and to the detriment of the Plaintiffs, (e) The RJR DEFENDANTS failed to supervise the distribution of their tobacco products to assure that such products were not sold into criminal channels or paid for with illicit funds, (f) The RJR DEFENDANTS failed to act reasonably when they were put on notice of their involvement with money launderers. (g) The RJR DEFENDANTS entered into an understanding or agreement, express or tacit, with their distributors, customers, agents, consultants, and other coconspirators, to participate in a common scheme, plan, or design to commit the aforesaid tortious acts and thereby launder money to the detriment of THE EUROPEAN COMMUNITY and the MEMBER STATES. In pursuance of the agreement, RJR and its distributors, customers, agents, consultants, and other coconspirators acted tortiously by, among other things, committing the aforesaid acts constituting public nuisance, thereby causing harm to Plaintiffs. The RJR DEFENDANTS, through joint action with their coconspirators, acted tortiously, recklessly, unlawfully, and negligently to the detriment of

Plaintiffs. By means of the aforesaid concerted action, the RJR DEFENDANTS and their coconspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein.

204. Through these and other intentional and negligent acts and omissions, the RJR DEFENDANTS have substantially and unreasonably offended, interfered with, and caused damage to the public in the exercise of rights common to all, in a manner such as to (a) offend public morals, (b) interfere with use by the public of a public place, (c) endanger and injure the property, life, health, safety, peace, convenience, and comfort of a considerable number of persons; and (d) injure and interfere with the market for tobacco products in THE EUROPEAN COMMUNITY and the MEMBER STATES; and (e) injure the economic well being of the citizens of THE EUROPEAN COMMUNITY and the MEMBER STATES. The acts and omissions of the RJR DEFENDANTS constitute a public nuisance under state and federal common law. This public nuisance, or some part of it, continues unabated to the detriment of Plaintiffs' interests and has undermined and endangered the Customs Territory, Customs Border, and free market that THE EUROPEAN COMMUNITY is bound to protect.

205. The RJR DEFENDANTS knew, or reasonably should have known, that their acts and omissions relating to money laundering created great dangers to the community, including Plaintiffs' economic and non-economic interests. The DEFENDANTS directly, or through their coconspirators, undermined THE EUROPEAN COMMUNITY'S duties and authority to regulate ports; to regulate foreign commerce; to regulate

customs territories, free-trade zones, and customs-bonded warehouses; to regulate transportation into THE EUROPEAN COMMUNITY or within its borders; to ensure and regulate the free movement of goods within THE EUROPEAN COMMUNITY; to regulate safety and security at sea; to regulate and take action to protect against breaches of THE EUROPEAN COMMUNITY Customs Territory or THE EUROPEAN COMMUNITY Customs Border; and to regulate and set rules to combat money laundering, all harms different from those suffered by members of the general public or the Member States, and all wrongs which it is the duty and responsibility of THE EUROPEAN COMMUNITY to redress.

206. The RJR DEFENDANTS have acted maliciously, wantonly, and with a recklessness that bespeaks an improper motive and vindictiveness, and have engaged in outrageous and oppressive conduct and with a reckless or wanton disregard of safety and rights. Their conduct amounts to a fraud on the public.

207. As a direct and proximate result of the acts and/or omissions of the RJR DEFENDANTS, which constitute a public nuisance, Plaintiffs have sustained and continue to sustain injury as set forth more fully in paragraphs one hundred forty-four (144) through one hundred forty-nine (149). THE EUROPEAN COMMUNITY and the MEMBER STATES each have the right to recover damages as set forth in paragraphs one hundred forty-four (144) through one hundred forty-nine (149) in that each has suffered damages that are unique to it and which are of a kind different from those suffered by the general public.

208. By reason of the injury to their economic and non-economic interests due to the public nuisance described in the preceding paragraphs to this complaint, Plaintiffs are entitled to an award of damages, including actual, compensatory, restitutionary, and punitive damages. Furthermore, the Plaintiffs seek a declaratory judgment in their favor pursuant to 28 U.S.C. §2201(a).

**COUNT VIII**

**EUROPEAN COMMUNITY AND MEMBER STATES**

**(AS TO ALL RJR DEFENDANTS)**
**(PUBLIC NUISANCE — INJUNCTIVE RELIEF)**

209. Plaintiffs restate and reallege paragraphs one (1) through two hundred eight (208) and further allege:

210. Plaintiffs are governmental authorities.

211. Money laundering and related criminal activities are a violation of law and a public nuisance.

212. The money-laundering activities in the United States and THE EUROPEAN COMMUNITY of the RJR DEFENDANTS: (a) have substantially and unreasonably interfered with, offended, injured and endangered, and continue to interfere with, offend, injure and endanger, the public health, morals, safety, convenience, and well-being of the general public, the financial infrastructure of THE EUROPEAN COMMUNITY, and the operation of the market for tobacco products in THE EUROPEAN COMMUNITY and the MEMBER STATES and have interfered with and endangered the Customs Territory, Customs Border, and free market which THE EUROPEAN COMMUNITY is bound to protect;

(b) constitute conduct that is proscribed by applicable laws, administrative regulations, and directives; (c) constitute conduct of a continuing nature and/or have produced a permanent or long-lasting effect, and the DEFENDANTS know or should know that said conduct has a significant harmful effect upon the public right.

213. The money-laundering activities of the RJR DEFENDANTS in the United States, THE EUROPEAN COMMUNITY, and the MEMBER STATES have been, and continue to be, effectuated through widespread criminal activity, including mail fraud, wire fraud, and other illegal acts.

214. The RJR DEFENDANTS facilitated the laundering of criminal proceeds by means of a variety of acts and omissions conducted in or directed from the United States, including those set forth in paragraphs 46-130 above.

215. Through these and other intentional and negligent acts and omissions, the RJR DEFENDANTS have substantially and unreasonably offended, interfered with, and caused damage to the public in the exercise of rights common to all, in a manner such as to (a) offend public morals, (b) interfere with use by the public of a public place, (c) endanger and injure the property, life, health, safety, peace, convenience, and comfort of a considerable number of persons; and (d) injure and interfere with the market for tobacco products in THE EUROPEAN COMMUNITY and the MEMBER STATES; and (e) injure the economic well being of the citizens of THE EUROPEAN COMMUNITY and the MEMBER STATES. The acts and omissions of the RJR DEFENDANTS constitute a public nuisance under

state and federal common law. This public nuisance, or some part of it, continues unabated to the detriment of Plaintiffs' interests and has undermined and endangered the Customs Territory, Customs Border, and free market that THE EUROPEAN COMMUNITY is bound to protect.

216. The RJR DEFENDANTS knew, or reasonably should have known, that their acts and omissions relating to money laundering created great dangers to the community, including Plaintiffs' economic and non-economic interests. The DEFENDANTS directly, or through their coconspirators, undermined THE EUROPEAN COMMUNITY'S duties and authority to regulate ports; to regulate foreign commerce; to regulate customs territories, free-trade zones, and customs-bonded warehouses; to regulate transportation into THE EUROPEAN COMMUNITY or within its borders: to ensure and regulate the free movement of goods within THE EUROPEAN COMMUNITY; to regulate safety and security at sea; to regulate and take action to protect against breaches of THE EUROPEAN COMMUNITY Customs Territory or THE EUROPEAN COMMUNITY Customs Border; and to regulate and set rules to combat money laundering, all harms different from those suffered by members of the general public or the Member States, and all wrongs which it is the duty and responsibility of THE EUROPEAN COMMUNITY to redress.

217. The RJR DEFENDANTS have acted maliciously, wantonly, and with a recklessness that bespeaks an improper motive and vindictiveness, and have engaged in outrageous and oppressive conduct and with a reckless or wanton disregard of safety and

rights. Their conduct amounts to a fraud on the public.

218. As a direct and proximate result of the acts and/or omissions of the RJR DEFENDANTS, which constitute a public nuisance, Plaintiffs have sustained and continue to sustain injury as set forth more fully in paragraphs one hundred forty-four (144) through one hundred forty-nine (149). In addition, damages do not constitute a full and adequate remedy at law, and for this reason Plaintiffs are therefore entitled to full common-law injunctive and equitable relief, including a judgment permanently enjoining RJR DEFENDANTS from the continuation of activities constituting a public nuisance, and compelling RJR DEFENDANTS to take steps to abate and prevent the money laundering that is the subject matter of this complaint. Furthermore, the Plaintiffs seek a declaratory judgment in their favor pursuant to 28 U.S.C. § 2201(a).

## COUNT IX

## EUROPEAN COMMUNITY AND MEMBER STATES

## (AS TO ALL RJR DEFENDANTS) (UNJUST ENRICHMENT)

219. Plaintiffs restate and reallege paragraphs one (1) through two hundred eighteen (218) and further allege:

220. The RJR DEFENDANTS were unjustly enriched through their money-laundering scheme at Plaintiffs' expense. The acts and omissions of the RJR DEFENDANTS and others have placed in the possession of these DEFENDANTS money under such circumstances that in equity and good conscience they ought not to retain it.

221. The RJR DEFENDANTS were unjustly enriched through their money-laundering scheme. The RJR DEFENDANTS entered into an understanding or agreement, express or tacit, with their distributors, customers, agents, consultants, and other coconspirators, to participate in a common scheme, plan, or design to commit the aforesaid tortious acts and thereby launder the proceeds of criminal activity to the detriment of THE EUROPEAN COMMUNITY and the MEMBER STATES. In pursuance of the agreement, the RJR DEFENDANTS and their distributors, customers, agents, consultants, and other coconspirators acted tortiously by, among other things, committing the aforesaid acts constituting unjust enrichment, thereby causing harm to Plaintiffs. The RJR DEFENDANTS, through joint action with their coconspirators, acted tortiously, recklessly, unlawfully, and negligently, to the detriment of Plaintiffs. By means of the aforesaid concerted action, the RJR DEFENDANTS and their coconspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein.

222. THE EUROPEAN COMMUNITY provides at its expense a marketplace without internal frontiers that inures to the benefit of all commercial enterprises that operate within the borders of THE EUROPEAN COMMUNITY. It is this marketplace that makes the sale of products such as cigarettes more expeditious and profitable. The RJR DEFENDANTS and their coconspirators in laundering the proceeds of criminal activity, make illicit use of this marketplace to their economic benefit and to the economic detriment of THE EUROPEAN COMMUNITY and the MEMBER

STATES. The RJR DEFENDANTS were unjustly enriched through their money-laundering scheme. By reason of their money-laundering scheme, the RJR DEFENDANTS were enabled to illegally enhance profits, market share, and the sales price of their international tobacco operations.

223. The unjust enrichment of the RJR DEFENDANTS was accomplished at the expense of Plaintiffs. By reason of the money-laundering scheme, Plaintiffs were, and continue to be, deprived of money and property, and have suffered other economic and non-economic injuries, and RJR DEFENDANTS reaped vast profits and proceeds from their illegal scheme.

224. Under these circumstances, the receipt and retention of the money derived from money-laundering operations are such that, as between Plaintiffs and RJR DEFENDANTS, it is unjust for RJR DEFENDANTS to retain it.

225. Equity and good conscience require the RJR DEFENDANTS to pay damages and restitution to Plaintiffs, disgorge their ill-gotten gains and, to effectuate these remedies, a constructive trust and equitable lien should be imposed by this Court upon the proceeds obtained by the RJR DEFENDANTS by reason of money-laundering activities, which proceeds are rightly owned by and belong to Plaintiffs. Plaintiffs have been injured as set forth more fully in paragraphs one hundred forty-four (144) through one hundred forty-nine (149), and are entitled to recover actual, compensatory, and punitive damages. Judgment in Plaintiffs' favor should include full Common-Law Injunctive and Equitable Relief. Furthermore, the Plaintiffs seek a declaratory

judgment in their favor pursuant to 28 U.S.C. § 2201(a).

**COUNT X**

**MEMBER STATES**

**(AS TO ALL RJR DEFENDANTS)**
**(UNJUST ENRICHMENT)**

226. Plaintiffs restate and reallege paragraphs one (1) through two hundred twenty-five (225) and further allege:

227. RJR DEFENDANTS received funds, including the proceeds of narcotics trafficking, and received the instrumentalities of illicit conduct. Such funds and instrumentalities, and the proceeds thereof, were and are the property of the MEMBER STATES as of the time of the commission of the illicit conduct.

228. By appropriating Plaintiffs' funds and property for themselves, DEFENDANTS have been enriched at Plaintiffs' expense. RJR DEFENDANTS have rejected demands for compensation.

229. Under the circumstances, in good conscience and equity, RJR DEFENDANTS cannot retain such funds and instrumentalities, and the proceeds thereof.

230. Equity and good conscience require the RJR DEFENDANTS to pay damages and restitution to Plaintiffs, disgorge their ill-gotten gains and, to effectuate these remedies, a constructive trust and equitable lien should be imposed by this Court upon the proceeds obtained by RJR DEFENDANTS by reason of money-laundering activities, which proceeds are rightly owned by and belong to Plaintiffs. Plaintiffs are entitled to damages, including actual, compensatory, and punitive damages, and their

injuries are set forth more fully above in paragraphs one hundred forty-four (144) through one hundred forty-nine (149). Judgment in Plaintiffs' favor should include full Common-Law Injunctive and Equitable Relief. Furthermore, the Plaintiffs seek a declaratory judgment in their favor pursuant to 28 U.S.C. §2201(a).

**COUNT XI**

**EUROPEAN COMMUNITY AND MEMBER STATES**

**(AS TO ALL RJR DEFENDANTS)**
**(NEGLIGENCE)**

231. Plaintiffs restate and reallege paragraphs one (1) through two hundred thirty (230) and further allege:

232. DEFENDANTS owed, and continue to owe, a duty of reasonable care to refrain from causing foreseeable loss to the Plaintiffs. DEFENDANTS were and are obligated to avoid negligently causing harm to Plaintiffs and were and are duty-bound to:

(a.) design, implement, and utilize effective monitoring and oversight procedures, including appropriate compliance programs, to deter and detect money laundering-related activities by their employees and agents;

(b.) investigate and terminate the money laundering-related conduct of their employees and agents, particularly inasmuch as their managerial personnel with decision-making authority were put on reasonable notice of such illicit conduct;

(c.) deal with the Plaintiffs, and their representatives, in an honest, good faith, and forthright manner;

(d.) terminate sales of their tobacco products to or through persons or entities known to be engaged, directly or indirectly, in money laundering;

(e.) comply with federal and state statutes and the standards of care reflected therein;

(f.) produce, market, and distribute their cigarette products lawfully and with due care; and

(g.) use proper practices and procedures in the hiring, selection, approval, instruction, training, supervision, and discipline of employees and agents engaged in the production, marketing, and distribution of their products, some of whom the RJR DEFENDANTS knew, or reasonably should have known, were assisting and otherwise engaged in money laundering.

233. As manufacturers, distributors, and dominant participants in the marketplace, RJR DEFENDANTS had, and continue to have, the authority and ability to act reasonably to prevent money laundering in connection with the sale of their products for the protection of Plaintiffs. Reasonable steps could and should have been taken by the RJR DEFENDANTS to prevent or reduce the risk of their products being sold to persons who were using the purchase of cigarettes to launder the proceeds of criminal activity.

234. The RJR DEFENDANTS, as manufacturers, distributors, and dominant participants in the marketplace, have a special ability and duty to exercise reasonable care to detect and guard against the risks associated with the distribution of their products, for the benefit and protection of those foreseeably and unreasonably

placed at risk of harm from the distribution of their products, including Plaintiffs.

235. The RJR DEFENDANTS' unreasonable acts and omissions created and enhanced the risk that their products would be distributed to persons who would use the purchase of cigarettes to launder criminal proceeds.

236. The RJR DEFENDANTS' unreasonable acts and omissions affirmatively and foreseeably caused substantial economic and non-economic damages to the Plaintiffs, and otherwise obstructed their ability to protect themselves from harms associated with money laundering. The RJR DEFENDANTS, acting with and through their employees, agents, and coconspirators, breached their duty of care, as aforesaid, by acts and/or omissions that posed an unreasonable and foreseeable risk of harm to Plaintiffs. The RJR DEFENDANTS entered into an understanding or agreement, express or tacit, with their distributors, customers, agents, consultants, and other coconspirators, to participate in a common scheme, plan, or design to commit the aforesaid tortious acts, and thereby launder criminal proceeds to the detriment of THE EUROPEAN COMMUNITY and the MEMBER STATES. In pursuance of the agreement, the RJR DEFENDANTS and their distributors, customers, agents, consultants, and other coconspirators acted tortiously by, among other things, committing the aforesaid acts constituting negligence, thereby causing harm to Plaintiff. The RJR DEFENDANTS, through joint action with their coconspirators, acted tortiously, recklessly, unlawfully, and negligently, to the detriment of Plaintiffs. By means of the aforesaid concerted action, the RJR DEFENDANTS and their

coconspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein. The RJR DEFENDANTS' tortious conduct proximately caused, and continues to cause, damage to the economic and non-economic interests of the Plaintiffs, as set forth more fully in paragraphs one hundred forty-four (144) through one hundred forty-nine (149).

237. The RJR DEFENDANTS have acted maliciously, wantonly, and with a recklessness that bespeaks an improper motive and vindictiveness, and have engaged in outrageous and oppressive conduct and with a reckless or wanton disregard of safety and rights. Their conduct amounts to a fraud on the public.

238. By reason of the injury to their economic and non-economic interests due to the negligence of the RJR DEFENDANTS, as aforesaid, Plaintiffs are entitled to an award of damages, including actual, compensatory, and punitive damages. In addition, damages do not constitute a full and adequate remedy at law, and for this reason, Plaintiffs are entitled to full Common-Law Injunctive and Equitable Relief, including a judgment permanently enjoining RJR DEFENDANTS from the continuation of activities constituting negligence, and compelling RJR DEFENDANTS to take steps to abate and prevent the laundering of criminal proceeds through the purchase and sale of their products. Furthermore, the Plaintiffs seek a declaratory judgment in their favor pursuant to 28 U.S.C. § 2201(a).

## COUNT XII

## EUROPEAN COMMUNITY AND MEMBER STATES

## (AS TO ALL RJR DEFENDANTS) (NEGLIGENT MISREPRESENTATION)

239. Plaintiffs restate and reallege paragraphs one (1) through two hundred thirty-eight (238) and further allege:

240. The RJR DEFENDANTS owed, and continue to owe, a duty of reasonable care to refrain from causing foreseeable loss to Plaintiffs. The RJR DEFENDANTS have assumed the special duty to speak truthfully to government officials, and particularly due to their superior knowledge of their own conduct, were bound to speak with due care. The RJR DEFENDANTS were and are obligated to avoid negligently causing foreseeable harm to Plaintiffs, and were and are duty-bound to exercise reasonable care to: (a) refrain from negligently misrepresenting — through documents and other forms of communication that the RJR DEFENDANTS knew or should have known would be reasonably relied on by Plaintiffs -- the payment for and/or value of cigarettes; the destination of cigarettes; and the sources of funds with which cigarettes are purchased; (b) be truthful in their representations to Plaintiffs and their representatives concerning money laundering and other improper activities as aforesaid; and (c) avoid misleading Plaintiffs when providing Plaintiffs with such information as the DEFENDANTS possess concerning the money laundering associated with the RJR DEFENDANTS' products into THE EUROPEAN COMMUNITY.

241. The RJR DEFENDANTS breached their duty to Plaintiffs by negligently making various material misrepresentations and/or failing to disclose material information to Plaintiffs and their representatives as aforesaid.

242. The RJR DEFENDANTS have acted maliciously, wantonly, and with a recklessness that bespeaks an improper motive and vindictiveness and have engaged in outrageous and oppressive conduct and with a recklessness or wanton disregard of the Plaintiffs' interests and rights. Their conduct amounts to a fraud on the public.

243. The RJR DEFENDANTS, acting with and through their employees, agents, and coconspirators, breached their duty of care, as aforesaid, by acts and/or omissions that posed an unreasonable risk of foreseeable harm to Plaintiffs.

244. Plaintiffs reasonably relied on DEFENDANTS' misrepresentations and, as a result, DEFENDANTS' breach proximately caused, and continues to cause, damage to the economic interest of Plaintiffs. The RJR DEFENDANTS entered into an understanding or agreement, express or tacit, with their distributors, customers, agents, consultants, and other coconspirators, to participate in a common scheme, plan, or design to commit the aforesaid tortious acts and thereby launder the proceeds of criminal activity to the detriment of THE EUROPEAN COMMUNITY and the MEMBER STATES. In pursuance of the agreement, RJR and its distributors, customers, agents, consultants, and other coconspirators acted tortiously by, among other things, committing the aforesaid acts constituting negligent misrepresentation, thereby causing harm

to Plaintiffs. The RJR DEFENDANTS, through joint action with their coconspirators, acted tortiously, recklessly, unlawfully, and negligently, to the detriment of Plaintiffs. By means of the aforesaid concerted action, the RJR DEFENDANTS and their coconspirators are jointly and severally liable for the torts and other wrongful conduct alleged herein.

245. By reason of the injury to its interests due to the negligence, malice, and recklessness of the RJR DEFENDANTS, as set forth more fully in paragraphs one hundred forty-four (144) through one hundred forty-nine (149), Plaintiffs are entitled to an award of damages, including actual, compensatory, and punitive damages. In addition, damages do not constitute a full and adequate remedy at law, and for this reason, Plaintiffs are entitled to full Common-Law Injunctive and Equitable Relief, including a judgment permanently enjoining the RJR DEFENDANTS from the continuation of activities that gave rise to PLAINTIFFS' claim of negligent misrepresentation. Furthermore, the Plaintiffs seek a declaratory judgment in their favor pursuant to 28 U.S.C. § 2201(a).

## COUNT XIII

## MEMBER STATES

## (AS TO ALL RJR DEFENDANTS) (COMMON-LAW CONVERSION)

246. The MEMBER STATES restate and reallege paragraphs one (1) through two hundred forty-five (245) and further allege:

247. The RJR DEFENDANTS received funds, including the proceeds of narcotics trafficking, and received the instrumentalities of illicit conduct. Such funds and instrumentalities, and the proceeds thereof,

were and are the property of the Member States as of the time of the commission of the illicit conduct.

248. The RJR DEFENDANTS were obligated either to remit such funds and instrumentalities to Plaintiffs, or to refuse to accept such funds and instrumentalities. The RJR DEFENDANTS did neither. Instead, the RJR DEFENDANTS appropriated the funds and instrumentalities for their own use.

249. The RJR DEFENDANTS misappropriated Plaintiffs' money and property, and have rejected demands for compensation.

250. The RJR DEFENDANTS have assumed and exercised ownership over funds and instrumentalities belonging to the Plaintiffs. Plaintiffs have sustained and will continue to sustain damages as a result of the RJR DEFENDANTS' conversion, for which the RJR DEFENDANTS are liable to Plaintiffs.

251. The RJR DEFENDANTS have acted maliciously, wantonly, and with a recklessness that bespeaks an improper motive and vindictiveness, and have engaged in outrageous and oppressive conduct and with a reckless or wanton disregard of safety and rights. Their conduct amounts to a fraud on the public.

252. By reason of the injury to their economic and non-economic interests due to the negligence of the RJR DEFENDANTS, as set forth more fully above in paragraphs one hundred forty-four (144) through one hundred forty-nine (149), Plaintiffs are entitled to an award of damages, including actual, compensatory, and punitive damages. In addition, damages do not constitute a full and adequate

remedy at law, and for this reason, Plaintiffs are entitled to full Common-Law Injunctive and Equitable Relief, including a judgment permanently enjoining DEFENDANTS from the continuation of activities constituting conversion, and compelling DEFENDANTS to take steps to abate and prevent the laundering of criminal proceeds through the purchase and sale of their products. Furthermore, the Plaintiffs seek a declaratory judgment in their favor pursuant to 28 U.S.C. § 2201(a).

**COUNT XIV**

**MEMBER STATES**

**(AS TO ALL RJR DEFENDANTS)**
**(MONEY HAD AND RECEIVED)**

253. The MEMBER STATES restate and reallege paragraphs one (1) through two hundred fifty-two (252) and further allege:

254. The RJR DEFENDANTS knowingly received money belonging to Plaintiffs, including funds representing the proceeds of illicit conduct.

255. The RJR DEFENDANTS benefited from the receipt of money, the benefit of which remains with the RJR DEFENDANTS. A trust or equitable lien is impressed upon such money and the proceeds thereof.

256. Under principles of equity and good conscience, the RJR DEFENDANTS should not be permitted to keep the money and the proceeds thereof. The RJR DEFENDANTS knew that the funds in question were the proceeds of illicit conduct and, as such, were the property of Plaintiffs. Through deceit and acts of concealment, the RJR DEFENDANTS received, handled, deposited, and

transferred such funds to their own accounts. Plaintiffs have changed their positions as a result of the RJR DEFENDANTS' conduct and have been precluded from taking action against those persons involved in the illicit conduct, including the RJR DEFENDANTS, at the time of such conduct. The RJR DEFENDANTS' conduct was tortious, a trespass upon the rights and interests of Plaintiffs, and fraudulent.

257. Equity and good conscience require the RJR DEFENDANTS to pay damages and restitution to Plaintiffs, disgorge their ill-gotten gains and, to effectuate these remedies, a constructive trust and equitable lien should be imposed by this Court upon the proceeds obtained by the RJR DEFENDANTS by reason of money-laundering activities, which proceeds are rightly owned by and belong to Plaintiffs. Further, or in the alternative, Plaintiffs are entitled to damages, including actual, compensatory, and punitive damages, and their injuries are set forth more fully above in paragraphs one hundred forty-four (144) through one hundred forty-nine (149). Judgment in Plaintiffs' favor should include full Common-Law Injunctive and Equitable Relief. Furthermore, the Plaintiffs seek a declaratory judgment in their favor pursuant to 28 U.S.C. § 2201(a).

## DEMAND FOR JUDGMENT

WHEREFORE, the Plaintiffs demand judgment in their favor and against DEFENDANTS as follows:

258. Pursuant to COUNT I, damages, including interest, against the RJR DEFENDANTS, jointly and severally, the precise amount to be supplied to the Court upon a trial on the merits;

treble the actual damages pursuant to 18 U.S.C. § 1964(c), along with an award of the costs of the suit and a reasonable attorney's fee.

259. Pursuant to COUNT II, damages, including interest, against the RJR DEFENDANTS, jointly and severally, the precise amount to be supplied to the Court upon a trial on the merits; treble the actual damages pursuant to 18 U.S.C. § 1964(c), along with an award of the costs of the suit and a reasonable attorney's fee.

260. Pursuant to COUNT III, damages, including interest, against the RJR DEFENDANTS, jointly and severally, the precise amount to be supplied to the Court upon a trial on the merits; treble the actual damages pursuant to 18 U.S.C. § 1964(c), along with an award of the costs of the suit and a reasonable attorney's fee.

261. Pursuant to COUNT IV, damages, including interest, against the RJR DEFENDANTS, jointly and severally, the precise amount to be supplied to the Court upon a trial on the merits; treble the actual damages pursuant to 18 U.S.C. § 1964(c), along with an award of the costs of the suit and a reasonable attorney's fee.

262. Pursuant to COUNT V, RICO Injunctive and Equitable Relief against the RJR DEFENDANTS, jointly and severally, along with an award of the costs of the suit and a reasonable attorney's fee.

263. Pursuant to COUNT VI, against the RJR DEFENDANTS, jointly and severally, an award of compensatory, restitutionary, and punitive damages, with interest, the precise amount to be supplied to the Court upon a trial of the merits;

Common-Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.

264. Pursuant to COUNT VII, against the RJR DEFENDANTS, jointly and severally, an award of compensatory, restitutionary, and punitive damages, with interest, the precise amount to be supplied to the Court upon a trial of the merits; and the costs of the suit and a reasonable attorney's fee.

265. Pursuant to COUNT VIII, against the RJR DEFENDANTS, jointly and severally, Common-Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.

266. Pursuant to COUNT IX, against the RJR DEFENDANTS, jointly and severally, an award of compensatory, restitutionary, and punitive damages, with interest, the precise amount to be supplied to the Court upon a trial of the merits; Common-Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.

267. Pursuant to COUNT X, against the RJR DEFENDANTS, jointly and severally, an award of compensatory, restitutionary, and punitive damages, with interest, the precise amount to be supplied to the Court upon a trial of the merits; Common-Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.

268. Pursuant to COUNT XI, against the RJR DEFENDANTS, jointly and severally, an award of compensatory, restitutionary, and punitive damages, with interest, the precise amount to be supplied to the Court upon a trial of the merits; Common-Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.

269. Pursuant to COUNT XII, against the RJR DEFENDANTS, jointly and severally, an award of compensatory, restitutionary, and punitive damages, with interest, the precise amount to be supplied to the Court upon a trial of the merits; Common-Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.

270. Pursuant to COUNT XIII, against the RJR DEFENDANTS, jointly and severally, an award of compensatory, restitutionary, and punitive damages, with interest, the precise amount to be supplied to the Court upon a trial of the merits; Common-Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.

271. Pursuant to COUNT XIV, against the RJR DEFENDANTS, jointly and severally, an award of compensatory, restitutionary, and punitive damages, with interest, the precise amount to be supplied to the Court upon a trial of the merits; Common-Law Injunctive and Equitable Relief; and the costs of the suit and a reasonable attorney's fee.

272. Such other and similar relief as the Court deems just, proper, and equitable.

273. PLAINTIFFS demand a trial by jury as to all issues triable as of right by jury.

Dated: New York, New York
November 23, 2009

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